

## **61–80. Neonatal Screening For Inborn Metabolic Errors and Hemoglobinopathies.**

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### **Section A-Purpose and Scope**

This regulation establishes rules implementing provisions of Section 44–37–30 of the South Carolina Code of Laws, 1976, as amended, regarding testing of newborn children for inborn metabolic errors and hemoglobinopathies. The Department of Health and Environmental Control has been given the legislative mandate to promulgate rules and regulations for screening for inborn metabolic errors and hemoglobinopathies and to ensure compliance with the screening of every child born in South Carolina. The responsibilities of the various agencies, institutions and persons involved in the screening process are defined. Procedures for storage and use of blood specimens and maintenance of confidentiality are included.

### **Section B-Definitions**

1. Inborn Metabolic Errors—shall mean inborn errors of metabolism.
2. Hemoglobinopathy—shall mean a hematologic disorder or carrier state caused by alteration in the genetically determined molecular structure of hemoglobin which may result in overt anemia as well as clinical and other laboratory abnormalities.
3. Identifying Information—shall mean child's legal name, sex, race, birth date, time of birth, place of birth, birth weight, current weight, feeding type; parent's or legal guardian's complete name, complete address and telephone number; mother's Social Security Number.
4. Attending Physician—shall mean the physician who has entered into an agreement to provide care during and/or after delivery for the mother and/or her child. The physician listed on the laboratory form will be assumed to be the attending physician until notification to the contrary is received in accordance with Official Departmental Instructions.
5. Department—shall mean the South Carolina Department of Health and Environmental Control.
6. Laboratory—shall mean the South Carolina Department of Health and Environmental Control Bureau of Laboratories.
7. Bureau of Maternal and Child Health—shall mean an organizational unit of the South Carolina Department of Health and Environmental Control.
8. Official Departmental Instructions—shall mean detailed instructions approved by the Commissioner of the South Carolina Department of Health and Environmental Control or his designee under which the public and private health care providers, including hospitals, laboratories, clinics, physicians and their staffs screen all children born in South Carolina for designated Inborn Metabolic Errors and Hemoglobinopathies.

### **Section C-Testing**

1. The Laboratory shall perform all screening tests for inborn metabolic errors and hemoglobinopathies using procedures compliant with the Clinical Laboratories Improvement Act of 1988, as amended, and approved by the Food and Drug Administration. If any result is abnormal, the appropriate test shall be repeated and confirmatory tests performed in accordance with Official Departmental Instructions.

2. The Laboratory, in conjunction with the Bureau of Maternal and Child Health, shall adopt standards for the quality assurance and interpretation of approved tests and for the collection of specimens.

3. Confirmation and repeat specimen testing are available from the Laboratory at no charge to patients suspected or diagnosed as having one of the diseases if the analysis is completed at the Laboratory.

4. Test results and identifying information are to be reported and recorded in accordance with Official Departmental Instructions.

#### Section D-Collection of Specimen

1. A specimen shall be collected from every child born in South Carolina for the purpose of screening for inborn metabolic errors and hemoglobinopathies.

##### 2. Births in a Hospital

a. The attending physician is responsible for the collection of the specimen from every child born in the hospital in accordance with Official Departmental Instructions and is responsible for submission of the specimen to the Laboratory on the day of collection.

b. Under the direction of the attending physician, the specimen shall be collected under the most favorable conditions following the procedures specified in the Official Departmental Instructions. The brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies and blood specimen storage options shall be given to the parent or legal guardian of the child.

c. A specimen shall be collected from every child born in the hospital prior to release from the hospital (except when the parents object due to religious convictions) in accordance with the procedure specified in the Official Departmental Instructions. If the parent objects to the screening on the basis of religious convictions, the parent shall complete the procedure specified in the Official Departmental Instructions.

d. If for some reason the specimen is not collected at the hospital, the hospital shall then be responsible for notifying the Bureau of Maternal and Child Health as specified in the Official Departmental Instructions.

e. The Hospital shall review the patient record for each child born in the hospital no later than ten (10) days after delivery to ensure that a specimen was collected and submitted to the Laboratory.

##### 3. Births Outside a Hospital

a. The attending physician is responsible for the collection of the specimen from every child in accordance with the Official Departmental Instructions and for submission of the specimen to the Laboratory on the day of collection.

b. Under the direction of the attending physician, the specimen shall be collected under the most favorable conditions following the procedure specified in the Official Departmental Instructions. The brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies and blood specimen storage options shall be given to the parent or legal guardian of the child.

c. If the parents object to the screening on the basis of religious convictions, the parents shall complete the procedure specified in the Official Departmental Instructions.

d. If for some reason the specimen is not collected within three (3) days of delivery by the attending physician, this physician shall notify the Bureau of Maternal and Child Health as specified in the Official Departmental Instructions.

e. If there is not an attending physician, then the person in attendance is responsible for the collection of the specimen. If there is no other person in attendance, then the parents or legal

guardian shall notify the Health Department in the county in which the child resides within three (3) days of delivery so that a specimen may be collected.

#### Section E-Assurance of Diagnosis and Follow-up

1. Information obtained as a result of the tests conducted for screening for inborn metabolic errors and hemoglobinopathies is confidential and may be released only to the infant's physician or other staff acting under the direction of the physician, the child's parent or legal guardian, and the child when he/she is eighteen years of age or older.

2. Normal and abnormal test results will be forwarded by the Laboratory and/or Bureau of Maternal and Child Health to the attending physician who shall be responsible for informing the parents or legal guardian of test results.

3. If the child is not under the care of the attending physician, as specified in the Official Departmental Instructions, the person in attendance shall notify the Bureau of Maternal and Child Health. The Department will then notify the parents or legal guardian of the test results.

4. Upon notification that a specimen was insufficient or that it is necessary for a test to be repeated, the attending physician shall collect and submit a second specimen to the Laboratory in accordance with Official Departmental Instructions.

5. The attending physician shall initiate appropriate medical follow-up and diagnosis when abnormal test results occur. If that is not possible, the Bureau of Maternal and Child Health shall be notified as specified in the Official Departmental Instructions.

6. The attending physician shall notify the Bureau of Maternal and Child Health of all children born in South Carolina who are diagnosed as having inborn metabolic errors or hemoglobinopathies.

7. Appropriate genetic counseling should be offered to all families of children with abnormal test results as outlined in the Official Departmental Instructions.

#### Section F-Storage of Specimen

1. Hospital staff or other persons who collect blood specimens for the purpose of screening for inborn metabolic errors and hemoglobinopathies shall inform each child's parent or legal guardian of the blood specimen storage options.

2. Hospital staff or other persons who collect these blood specimens shall give the brochure produced by the Department that explains newborn screening for inborn metabolic errors and hemoglobinopathies to the parent or legal guardian as a means of informing them of the benefits of screening and blood specimen storage. Hospital staff or other persons who collect these blood specimens shall indicate that the brochure was given to the parent or legal guardian by documenting in the appropriate space on the Blood Sample Storage Options Form.

3. The Laboratory shall store all specimens at minus 20° Centigrade and may release specimens for purposes of confidential, anonymous scientific study unless prohibited by the parents, legal guardians, or children from whom the specimens were obtained when the children are eighteen years of age or older.

4. Hospital staff or other persons who collect these specimens shall ensure that the parent's or legal guardian's storage choice is documented on the Blood Sample Storage Options form if the parent or legal guardian does not agree to have their child's blood specimen stored and potentially released for confidential, anonymous scientific study. In these instances, the Laboratory shall maintain all such specimens based upon the storage option chosen by the parent or legal guardian as documented on the Blood Sample Storage Options form.

#### Section G-Use of Stored Specimen

1. Stored blood specimens may be released for the purposes of confidential, anonymous scientific study unless prohibited by the parent, legal guardian, or child from whom the specimen was obtained when he/she is eighteen years of age or older.

2. The Department's Institutional Review Board shall approve all scientific studies that use stored blood specimens before the specimens are released.

3. Blood specimens released for scientific study shall not contain information that may be used to determine the identity of the children from whom they were obtained by the person(s) to whom the

specimens are released. The Department shall code the specimens before releasing them so that the Department can identify the children from whom the blood specimens were obtained if necessary.

4. If any such scientific study identifies genetic or other information that may benefit the children from whom the specimens were obtained, the Department may confidentially provide this information to the parents, legal guardians or children from whom the specimens were obtained when the children are eighteen years of age or older.

#### Section H-Forms

1. Religious Objection Form: The Religious Objection Form, Appendix A of this regulation, shall be completed if the parents refuse newborn screening for inborn metabolic errors and hemoglobinopathies for their child based upon religious convictions.

2. Information Release Form: The Information Release Form, Appendix B of this regulation, may be completed as needed for release of information regarding newborn screening for inborn metabolic errors and hemoglobinopathies to persons other than those specified elsewhere in this regulation.

3. Blood Sample Storage Options Form: The Blood Sample Storage Options Form, Appendix C of this regulation, shall be completed if the parents or legal guardians do not agree to have their child's specimen stored and potentially released for confidential, anonymous scientific study.

#### Section I-Enforcement Provision

##### 1. Constitutionality

If any part or provision of these regulations is legally declared unconstitutional or if the application thereof to any persons or circumstances is held invalid, the validity and constitutionality of the remainder of these regulations shall not be affected thereby.

##### 2. Penalties

Violation of these regulations shall be punishable in accordance with Section 44-37-30 of the Code of Laws of South Carolina, 1976, as amended.

#### APPENDIX A: Religious Objection Form: DHEC 1804, Newborn Screening Program, Parental Statement of Religious Objection

I am the parent or legal guardian of \_\_\_\_\_, a child born \_\_\_\_\_ in South Carolina. I request that my child not be tested by blood spot screening in order to detect silent, deadly metabolic diseases and hemoglobinopathies. I certify that this refusal is based on religious grounds. Religious grounds are the only permitted reason for refusal under South Carolina law, Section 44-37-30 (C).

I understand that my child may suffer brain damage, other bodily harm or death if a disease that can be detected by blood spot screening is not diagnosed. I understand that such harm can be lessened or prevented by early diagnosis and treatment. I understand that these diseases are usually silent, and may be present in a child that looks healthy. I understand that the blood spot screening test is the best way to detect these disorders early, and that testing is routinely done for every child. I understand that this testing is quick, easy and that the results are confidential. I understand that this testing has been the standard of care for all children born in South Carolina and the rest of the United States for many years.

I have been fully informed of, and fully understand, the possible devastating consequences to my child's health if blood spot screening is not done. I have been fully informed of, and fully understand the benefits of testing and blood specimen storage. I have been given the brochure produced by the South Carolina Department of Health and Environmental Control that describes the conditions for which testing is currently available and explains the benefits of testing and blood specimen storage. I also understand that my child would have been tested for these conditions except for my objection. I have been given the opportunity to ask questions concerning this testing and these conditions, and all of my questions have been fully answered to my satisfaction.

I release and hold harmless the South Carolina Department of Health and Environmental Control, the hospital or other facility at which the birth occurred, the person(s) responsible for the collection of the blood spots, and any other person or entity relying on this objection, for any injury, illness and/or consequences, including the death of my child, which may result to my child as the result of my refusal of blood spot screening.

Parent: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_

NOTE TO PROVIDERS: This form is only necessary if the parent or legal guardian refuses testing for inborn metabolic errors and hemoglobinopathies.

APPENDIX B: Information Release Form: DHEC 1878, Authorization to Release Information Relative to Newborn Screening for Inborn Metabolic Errors and Hemoglobinopathies

Please check all boxes that apply.

- ☐ A. I agree that information about \_\_\_\_\_, born \_\_\_\_\_, obtained as a result of tests conducted for screening for inborn metabolic errors and hemoglobinopathies may be released or exchanged with the following providers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ B. In cases where this information is immediately needed for continuity of health care, I authorize the South Carolina Department of Health and Environmental Control to provide this information to the providers listed above by fax.

- ☐ C. I authorize my signed form to be faxed to the providers listed above.

I understand that my confidentiality cannot be guaranteed when sending this information by fax. I understand that the copy of my signature below may be treated as an original signature.

I am the client, parent or legal guardian. I understand that I am responsible for this information if it is released to me and that my records are protected generally under state laws as well as statutes governing specific types of information and cannot be disclosed without my authorization. I also understand that I may revoke this authorization at any time except to the extent that action has been taken on it.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Revoked: \_\_\_\_\_ Date: \_\_\_\_\_

*Some babies are born with diseases of the blood or body function. A baby with one of these diseases looks healthy. However, these diseases can cause intellectual disability, abnormal growth, infections, or death. Some of these diseases can be found by early testing. This testing, called newborn screening, is important so that your baby is not harmed by one of these diseases. During newborn screening, a small sample of your baby's blood is taken from the heel. The blood is tested. The blood shows if your baby has any of the "newborn screening" diseases. If your baby has one of these diseases, your doctor can treat your baby.*

*DHEC can store your baby's blood sample for special study. Studies help DHEC find out new information about diseases. If a study finds something in your child's blood sample that can help your child, DHEC can confidentially notify you (or your child if he/she is 18 years or older).*

APPENDIX C: Blood Sample Storage Options Form: DHEC 1812, Blood Sample Storage Options, Screening for Inborn Metabolic Errors and Hemoglobinopathies

Child's complete legal name: \_\_\_\_\_

Child's date of birth: \_\_\_\_\_

Parent or legal guardian's complete name: \_\_\_\_\_

Parent or legal guardian's complete address: \_\_\_\_\_

South Carolina law requires the Department of Health and Environmental Control to store your child's blood sample in a manner required by law. The blood sample is collected on a special piece of filter paper. This is called "newborn screening." The blood is tested to see if your child has one of the "newborn screening" diseases that can cause intellectual disability, abnormal growth or even death. After the tests are done, the filter paper is stored in a freezer at the state laboratory. This storage is highly protected, and each sample is held under strict confidentiality. A child's blood sample can only be released for approved research, without any identifying information, to learn new information about diseases. The law allows you to choose one of the options below, if you do not want your child's blood sample handled this way. **However, you are not required to check one of the boxes below.**

- ☐ I want my child's blood sample stored by the South Carolina Department of Health and Environmental Control, but I do not want my child's blood sample to be used for research.
- ☐ I want my child's blood sample destroyed by the South Carolina Department of Health and Environmental Control two years after the date of testing.
- ☐ I want my child's blood sample to be returned to me two years after the date of testing. I understand that it is my responsibility to notify the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC, 29201, of address or name changes.

I have been given the brochure produced by the South Carolina Department of Health and Environmental Control that describes the conditions for which testing is currently available and explains the benefits of testing and blood sample storage.

Parent: \_\_\_\_\_ Date: \_\_\_\_\_

I have given the brochure produced by the South Carolina Department of Health and Environmental Control to the parent/legal guardian of the child named above.

Name: \_\_\_\_\_ Date: \_\_\_\_\_

*DHEC can store your baby's blood sample for special study. Studies help DHEC find out new information about diseases. If a study finds something in your child's blood sample that can help your child, DHEC can confidentially notify you (or your child if he/she is 18 years or older).*

IF THIS FORM IS NOT SIGNED BY A PARENT/LEGAL GUARDIAN AND/OR NONE OF THE ABOVE BOXES ARE CHECKED, THE BLOOD SAMPLE WILL BE STORED AS REQUIRED BY SC CODE ANN. SECTION 44-37-30 AT -20 DEGREES CENTIGRADE AND MAY BE RELEASED ONLY FOR CONFIDENTIAL, ANONYMOUS SCIENTIFIC STUDY.

NOTE TO PROVIDERS: The parent or legal guardian is not required to sign this form. However, the person who gives the brochure that explains neonatal testing and blood sample storage to the parent or legal guardian must sign this form.

**HISTORY:** Added by State Register Volume 3, Issue No. 7, eff July 13, 1979. Amended by State Register Volume 13, Issue No. 3, eff March 24, 1989; State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003.

**Code Commissioner's Note**

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded".

## **61-81. State Environmental Laboratory Certification Program.**

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- A. Authority

This Regulation implements Code Section 44-55-10 et seq., known as the South Carolina Safe Drinking Water Act; Code Section 48-1-10 et seq., known as the South Carolina Pollution Control Act; and Act #436 of 1978, known as the South Carolina Hazardous Waste Management Act.

#### B. Purpose

This Regulation provides the mechanism to assure the validity and quality of the data being generated for compliance with State regulations.

#### C. Scope

This Regulation applies to any laboratory performing analyses to determine the quality of air, drinking water, hazardous waste, solid waste, or wastewater; performing bioassays; or performing any other analyses related to environmental quality evaluations required by the Department or which will be officially submitted to the Department.

#### D. Definitions

(1) "Acceptable results" means a variance of less than plus or minus two (2) standard deviations from the true value of a performance audit sample, as utilized by the EPA for its evaluation of state laboratories, unless another variance for a specific parameter is announced prior to the analysis.

(2) "Board" means the governing body of the South Carolina Department of Health and Environmental Control.

(3) "Certificate" means that document issued by the State Environmental Laboratory Certification Officer showing those parameters for which a laboratory has received certification. The certificate remains the property of the Department and must be surrendered at the direction of the Department.

(4) "Certification" means a declaration by the Department that a laboratory has been evaluated under the State Environmental Laboratory Certification Program and found acceptable to analyze specified parameters.

(5) "CFR" means the Code of Federal Regulations.

(6) "Commissioner" means the duly constituted Commissioner of the Department or his authorized agent.

(7) "Department" means the South Carolina Department of Health and Environmental Control, including personnel thereof authorized and empowered by the Board to act on behalf of the Department or Board.

(8) "EPA" means the United States Environmental Protection Agency.

(9) "Evaluation" means a complete review of the quality control procedures, records keeping, reporting procedures, methodology, and analytical technique of a laboratory for specific parameters.

(10) "Interim approval" means a declaration by the Department that a laboratory has been evaluated under the State Environmental Laboratory Certification Program prior to the date of required certification and has been determined to be in substantial compliance with its requirements.

(11) "Laboratory" means any facility that performs analyses to determine the quality of air, drinking water, solid waste, hazardous waste, wastewater, performs bioassays; or any other analyses related to environmental quality evaluations required by the Department or which will be officially submitted to the Department.

(12) "Laboratory Director" means that person who has been given the responsibility by the laboratory's governing body (owners, directors, commissioners, councilmen, mayor, board members or who so ever occupies the status of proprietor) of supervising the operations of the laboratory and insuring the quality of data reported.

(13) "Performance audit sample" means a sample in which the concentrations of the constituents required for certification are known only to the State Environmental Laboratory Certification Officer and is used to determine analysts' proficiency.

(14) "State Environmental Laboratory Certification Officer" means that person designated by the Department who is responsible for the management of the State Environmental Laboratory Certification Program or his authorized delegate.

#### E. Parameters Requiring Certification

Certification of the laboratory is required before the Department will accept analytical data for any parameter required by the following:

- (1) State Safe Drinking Water Act and Regulation

- (2) State Pollution Control Act and Regulations
- (3) State Solid Waste Management Regulation
- (4) State Hazardous Waste Act and Regulations

#### F. Certification Criteria

It is the responsibility of the Department to inform laboratories certified under this regulation and those who have applied for certification of requirements in acceptable procedures, methodology, techniques, facilities, quality control, records keeping, and equipment, including any changes in those requirements. At no time shall requirements be imposed on a laboratory as a condition of certification that are not also imposed on the environmental laboratories of the Department.

#### G. Certification

It is the responsibility of the laboratory to initiate the application for certification under this Regulation. A pre-evaluation form must be filed with the Department, if requested by the State Environmental Laboratory Certification Officer. Upon review of the information provided, an on-site evaluation will be scheduled.

Each laboratory requesting certification will be evaluated by the State Environmental Laboratory Certification Officer who may be assisted by members of the Department's environmental laboratory staff upon his request. A written report will be filed with the State Environmental Laboratory Certification Officer within thirty (30) days following the evaluation. A copy of this report will be mailed to the Laboratory Director and the governing body.

##### (1) Issuance of Certification

Within seven (7) days of the receipt of the written report of the evaluation, the State Environmental Laboratory Certification Officer will notify the laboratory of his determination. If the adequacy of the laboratory capability and its proficiency have been established and in the absence of substantial deficiencies, certification will be issued to the laboratory for the evaluated parameters. The certificate will remain the property of the Department.

If there is an equipment deficiency, certification may be granted upon the receipt of a copy of a purchase order; or a repeat visit may be made to substantiate proper use of the item.

##### (2) Certification Continuance Between Evaluations

(a) In order to maintain certification for each parameter, the laboratory will analyze a minimum of one performance audit sample annually where technically feasible.

(b) In order to maintain certification, the laboratory will participate in split sampling with the Department Laboratory when required by the State Environmental Laboratory Certification Officer.

##### (3) Frequency of Certification

The laboratory will be evaluated for renewal of certification every three (3) years.

At any time during the certification period, at the discretion of the State Environmental Laboratory Certification Officer, an on site evaluation will be performed. For the convenience of the laboratory personnel and the evaluators, advanced notice of the inspection will be given.

##### (4) Laboratory Name

Any facility certified under this program will maintain only one name for the facility. This name will be used in all official correspondence with the Department.

#### H. Loss of Certification

##### (1) Total Laboratory Certification

Once certified, a laboratory's certificate will be withdrawn for knowingly and willfully falsifying data.

##### (2) Parameter Certification

Once certified, a laboratory will have its certification for a parameter withdrawn by failure to:

- (a) Obtain acceptable results on a performance audit sample and a repeat audit sample.
- (b) Comply with any part of Section F of this Regulation.

(c) Report results of performance audit samples within thirty (30) calendar days of receipt of samples.

I. Recertification

(1) A laboratory having lost certification for falsifying reports or misrepresenting data will not be eligible for recertification for a period of one (1) year, unless the responsible individual(s) is/are no longer associated with the laboratory.

(2) A laboratory having lost parameter certification as described in Section H(2) will have its certification reinstated after obtaining acceptable results on a performance audit sample.

J. Contract Laboratories

Any laboratory which sub-contracts analytical work to another must establish that the contracted laboratory has been certified by the Department for the appropriate parameters. Laboratory records must indicate who performs the analyses and the name of the contract laboratory must be included in these records.

K. Appeals

In the event a Laboratory Director disagrees with a decision affecting certification, an appeal, in accordance with Department Regulation #72, December 28, 1976, entitled "Procedures for Contested Cases", can be made to the Board.

L. Reciprocity

Laboratories, located in other states, which have been certified under an equivalent program, as determined by the State Environmental Laboratory Certification Officer, are eligible for certification under this Regulation. A notarized copy of the laboratory's certificate and a copy of the program, if requested, must be received by the Department prior to consideration for State certification.

Laboratories in states without an equivalent program may be evaluated under this Regulation upon payment of a fee, set by the Board, and expenses incurred by the Department evaluator(s).

M. Effective Date

This Regulation shall become effective January 1, 1981. Prior to the effective date, the Department may evaluate laboratories and make recommendations to assure compliance with the requirements of this Regulation, and issue an interim approval should the requirements be met before the effective date.

**HISTORY: Added by State Register Volume 4, Issue No. 4, eff April 11, 1980.**

## **61-82. Proper Closeout of Wastewater Treatment Facilities.**

### **SECTION I: Definitions**

The definition of any work or phrase employed in Sections II, III, IV and V shall be the same as given in the S.C. Pollution Control Act. The following words or phrases, which are not defined in said law, shall be defined as follows:

1. Lagoon—Lagoon shall mean a relatively small body of water contained in an earthen basin of controlled shape which is designed for treatment or handling wastewater.
2. Package Plant—Package plant shall include prefabricated factory assembled units and other modular type units designed for the treatment of wastewater through activated sludge processes and modifications thereof. Although not generally considered a package plant, for the purpose of this Regulation, Imhoff tanks shall be considered a package plant.
3. Closeout—Closeout shall mean the cessation of waste treatment facility operations in accordance with the appropriate sections of this Regulation.
4. Abandonment—Abandonment shall mean the cessation of daily visits to the waste treatment facility by the certified operator in charge for the purpose of insuring proper operation and maintenance of a waste treatment facility.
5. "Should" and "Shall"—Should is permissive and shall is mandatory.

### **SECTION II: Proper closeout of lagoons**

1. Lagoons shall be drained only after written permission has been obtained from DHEC and in accordance with one of the below procedures, (procedures in order of decreasing desirability):

a. Sewage from the lagoon may be pumped into the treatment facility or receiving system replacing the lagoon, provided that the rate is such that hydraulic and/or organic overloading and surging of the replacement system is prevented and provided that permission is obtained from the owner of the replacement system; or

b. If the above method is not possible, the lagoon may be drained into the receiving stream at a rate not exceeding the maximum design flow of the lagoon, provided that before draining, the lagoon is allowed to stabilize without additional inflowing sewage for a period not less than the design retention time of the lagoon.

c. If neither of the above methods is possible, an alternative method of closeout may be proposed for DHEC consideration.

2. In each of the above alternatives, the lagoon shall be drained from the surface of the lagoon to prevent accumulated solids on the bottom of the lagoon from being carried out of the lagoon.

3. After the treated sewage has been drained from the lagoon, solid accumulation on the bottom of the lagoon shall be allowed to dry. A disinfectant suitable for control of odors and vectors shall be applied to all remaining solids when determined necessary by DHEC. After drying, the solids should be mixed with soil and left on the bottom of the lagoon, be removed for disposal in an approved landfill, or disposed in some other approved method.

4. The lagoon may be filled with soil or may be allowed to remain bowlshaped, so as to be utilized for purposes other than waste handling, i.e., fish ponds, irrigation ponds, etc., provided that this practice does not violate local health and vector control regulations and DHEC approval of the close-out is obtained prior to any alternative use of the facility.

#### SECTION III: Proper closeout of package plants

Package plants shall be drained in accordance with one of the following procedures:

a. Sewage may be pumped into the treatment facility or receiving system replacing the package plant, provided that the rate is such that overloading of the replacement system is prevented and provided that permission is obtained from the owner of the replacement system; or

b. Sewage may be pumped into portable tanks for transfer and disposal in a sewer system, provided that permission is obtained from the owner of the receiving system.

#### SECTION IV: Proper closeout of waste treatment facilities not defined as lagoons and package plants.

Waste treatment facilities not defined as lagoons and package plants shall be closed out in accordance with guidelines issued by DHEC on an individual basis. These guidelines shall be designed to prevent health hazards and to promote safety in and around the abandoned sites.

#### SECTION V: Procedures applicable to all closeouts

1. A request for site inspection for closeout shall be made by the responsible official to DHEC.

2. A site inspection shall be conducted by DHEC and authorization to proceed with closeout granted by DHEC.

3. Monitoring as deemed necessary by DHEC to prevent water quality violations or nuisance conditions will be established on a case-by-case basis and carried out in accordance with DHEC guidance.

4. Upon completion of closeout the responsible party shall request an inspection by DHEC. The results of the inspection shall be reduced to writing and forwarded to the responsible official approving or disapproving the closeout. In cases of disapproval discrepancies shall be noted and a follow-up inspection scheduled.

5. Closeout will be considered accomplished only after approval in writing from DHEC.

6. Areas around all waste treatment facilities undergoing closeout shall remain secured until closeout has been accomplished. In an instance of package plant closeout, the plant shall remain secured until electrical power has been disconnected and the plant is removed from the premises and depressions resulting from the removal of the system filled.

#### SECTION VI: Penalties

Any person determined to be in violation of the procedures outlined in this Regulation or found to have abandoned a waste treatment facility without initiating and completing approved closeout of

the waste treatment facility shall be subject to civil and criminal penalties prescribed in Section 48-1-320 and 48-1-330 of the South Carolina Code of Laws, 1976.

**HISTORY:** Added by State Register Volume 4, Issue No. 4, eff April 11, 1980.

## **61–83. Transportation of Radioactive Waste Into or Within South Carolina.**

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### Attachments:

Attachment I . . . . . Form RHA-200P "Application for Radioactive Waste Transport Permit"

Attachment II . . . . . Form RHA-PNC "Radioactive Waste Shipment Prior Notification and Manifest Form"

Attachment III . . . . . Form RHA-CT "Radioactive Waste Shipment Certification Form"

### 1. SCOPE

1.1 This regulation applies to any shipper, carrier or other person who transports radioactive waste into or within this State, to any persons involved in the generation of radioactive waste within this State, and to any shipper whose radioactive waste is transported into or within this State or is delivered, stored, or disposed of within this State.

1.2 All persons subject to the provisions of this regulation shall comply with all applicable provisions of the Nuclear Regulatory Commission Title 10 CFR Part 71 as revised January 1, 2006, (with the exception of sections 71.2, 71.6, 71.14(b), 71.19, 71.24, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.52, 71.53, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.99 and 71.100), Regulation 61–83 of the 1976 Code of Laws of South Carolina, and any disposal facility radioactive material license requirements regarding the packaging, transportation, disposal, storage or delivery of radioactive materials.

### 2. DEFINITIONS

2.1 "Carrier" means any person transporting radioactive wastes into or within the State for storage, disposal or delivery.

2.2 "Department" means the Department of Health and Environmental Control including personnel authorized to act on behalf of the Department.

2.3 "Disposal facility" means any facility located within the State, which accepts radioactive waste for storage or disposal.

2.4 "Generation" means the act or process of producing radioactive wastes.

2.5 "Manifest" means the document used for identifying the quantity, composition, origin, and destination of radioactive waste during its transport to a disposal facility.

2.6 "Operator" means every person who drives or is in actual physical control of a vehicle transporting radioactive waste.

2.7 "Persons" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, partnership or any other entity whatsoever.

2.8 "Permit" means an authorization issued by the Department to any person involved in the generation of radioactive waste, to transport such radioactive wastes or offer such waste for transport.

2.9 “Radioactive waste” means any and all equipment or materials, including irradiated nuclear reactor fuel, which are radioactive or have radioactive contamination and which are required pursuant to any governing laws, regulations, or licenses to be disposed of as radioactive waste.

2.10 “Radiological violation” means radioactive contamination or the emission of radiation in excess of applicable limits.

2.11 “Shipper” means any person, whether a resident of South Carolina or a non-resident:

2.11.1 who transfers radioactive waste to a carrier for transportation into or within the State; or,

2.11.2 who transports his own radioactive waste into or within the State; or,

2.11.3 who transfers radioactive waste to another person if such wastes are transported into or within the State.

2.12 “Transport” means the movement of radioactive wastes into or within South Carolina.

### 3. PERMITS

3.1 Before any shipper transports or causes to be transported radioactive waste into or within the State of South Carolina, he shall purchase an annual radioactive waste transport permit from the Department. An application for a permit shall be submitted on Department Form RHA-200P “Application for Radioactive Waste Transport Permit” together with the necessary fee to: Chief, Bureau of Radiological Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 20201.

3.2 Before a permit shall be issued, the shipper must deposit and maintain with the Department a cash or corporate surety bond in the amount of Five Hundred Thousand Dollars (\$500,000.00); or, provide to the Department satisfactory evidence of liability insurance.

3.2.1 For purposes of this regulation, liability insurance shall mean coverage of Five Hundred Thousand Dollars (\$500,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate, or as otherwise provided by State law.

3.2.2 Any insurance carried pursuant to Section 2210 of Title 42 of the United States Code and Part 140 of Title 10 of the Code of Federal Regulations shall be sufficient to meet the requirements of this section.

3.2.3 Liability insurance shall be specific to the packaging, transportation, disposal, storage and delivery of radioactive waste.

3.2.4 Shippers maintaining liability insurance for the purpose of this regulation may provide to the Department a certificate of insurance from their insurer indicating the policy number, limits of liability, policy date and specific coverage for packaging, transportation, disposal, storage and delivery of radioactive materials.

3.2.5 A cash or corporate surety bond previously posted will be returned to the shipper upon notification to the Department in writing of his intention to cease shipments of radioactive waste into or within the State. Such bond will be returned after the last such shipment is accepted safely at its destination.

3.3 Each permit application shall include a certification to the Department that the shipper will comply fully with all applicable State or Federal laws, administrative rules and regulations, licenses, or license conditions of the disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

3.4 Each permit application shall include a certification that the shipper will hold the State of South Carolina harmless for all claims, actions, or proceedings in law or equity arising out of radiological injury or damage to persons or property occurring during the transportation of its radioactive waste into or within the State including all costs of defending the same; provided, however, that nothing contained herein shall be construed as a waiver of the State’s sovereign immunity; and, further provided, that agencies of the State of South Carolina shall not be subject to the requirements of this provision.

3.5 Permit fees will be annually determined and assessed by the Department based on the following classifications:

3.5.1 Class X—more than an annual total of 75 cubic feet or more than 100 curies of radioactive waste for disposal within the State.

3.5.2 Class Y—an annual total of 75 cubic feet or less of radioactive waste consisting of 100 curies or less total activity for disposal within the State.

3.5.3 Class Z—any shipment of radioactive waste which is not consigned for storage or disposal within the State, but which is transported into or within the State.

3.6 Permits will be valid from the date of issuance through December 31 of each calendar year. Permit fees are not refundable. Permits may be renewed by filing a new application with the Department.

#### 4. SHIPPER'S REQUIREMENTS

4.1 Before any shipment of radioactive waste may be transported into or within the State, the shipper shall give written notice to the Department not less than 72 hours nor more than 30 days before the expected date of arrival of the shipment or departure from the shipper's facility within the State as the case may be, except as provided in paragraph 4.1.3.

4.1.1 All prior notifications shall be filed on a Department form designated as RHA-PNC "Radioactive Waste Shipment Prior Notification and Manifest Form."

4.1.2 The shipper shall immediately notify the Department of any cancellations or significant changes in the prior notification or manifest summary which may occur prior to the shipment departing his facility. For example, such changes include changes in date of arrival, carrier, route, waste description, curie content, volume, or waste classification.

4.1.3 For shipments consisting of 75 cubic feet or less containing one curie of radioactive material or less which may be consigned as non-exclusive use shipments according to applicable U.S. Department of Transportation regulations, the requirement for prior notification contained in paragraph 4.1 is waived. Such shipments must otherwise comply with all other applicable requirements regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

4.2. The shipper shall provide to the carrier with each separate shipment a copy of the RHA-PNC "Radioactive Waste Shipment Prior Notification and Manifest Form" required by paragraph 4.1. Such copy shall show any changes made pursuant to paragraph 4.1.2 above. Each shipper shall instruct the carrier to comply with the route and schedule contained therein.

4.3 The manifest accompanying each shipment of radioactive waste shall include a copy of the shipper's certification prepared on Department form RHA-CT, Part I, "Radioactive Waste Shipment Certification Form," which shall include certification that the shipment has been inspected and complies with all applicable State and Federal laws and administrative rules and regulations, license or license conditions of the disposal facility regarding the packaging, transportation, storage, disposal and delivery of radioactive wastes.

4.4 Following acceptance of each separate shipment at a disposal facility or at the consignee's facility, it shall be the responsibility of each shipper to provide to the Department for such shipment a copy of Department form RHA-PNC "Radioactive Waste Prior Notification and Manifest Form" with the Consignee Acknowledgement properly executed and to provide the Department with the "Radioactive Waste Shipment Certification Form," Department form RHA-CT, which accompanied that shipment.

#### 5. CARRIER REQUIREMENTS

5.1 For each shipment of radioactive waste materials shipped into or within the State, a carrier shall complete Part II: Carrier's Certification on the form RHA-CT provided by the shipper. The certificate shall be signed by a principal, officer, partner, responsible employee or other authorized agent of the carrier.

5.1.1 The carrier shall certify that the shipment is properly placarded for transport and that all shipping papers required by law and administrative rules and regulations have been properly executed; and,

5.1.2 that the transport vehicle has been inspected and meets the applicable requirements of the Federal government and the State of South Carolina, and that all safety and operational components are in good operative condition; and,

5.1.3 that the carrier has received a copy of the shipper's "Radioactive Waste Prior Notification and Manifest Form," specified in paragraph 4.2 and the "Radioactive Waste Shipment Certification Form," form RHA-CT specified in paragraph 4.3; and,

5.1.4 that the carrier shall comply fully with all applicable laws and administrative rules and regulations, both State and Federal, regarding the transportation of such waste.

5.2 A carrier shall immediately notify the Department of any variance, occurring after departure, from the primary route and estimated date of arrival of shipment as provided by the shipper on Form RHA-PNC.

5.3 The copies of Forms RHA-CT and RHA-PNC shall accompany the shipment to the destination and shall be presented together with the manifest and other shipping papers.

## 6. DISPOSAL FACILITY OPERATOR

6.1 Owners and operators of disposal facilities shall permanently record, and report to the Department within twenty-four (24) hours after discovery, all conditions in violation of the requirements of this regulation discovered as a result of inspections required by any license under which the facility is operated.

6.2 Prior to the receipt of radioactive wastes at a disposal facility in this State, the owners and operators of such facility shall notify each shipper of any special requirements, if any, in effect regarding the packaging, transportation, storage, disposal or delivery of such wastes at that facility.

6.3 No owner or operator of a disposal facility located within this State shall accept radioactive waste for storage or disposal unless the shipper of such waste has a valid, unsuspended permit issued pursuant to this regulation.

## 7. PENALTIES

7.1 Any person who commits a radiological violation shall:

7.1.1 be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00); and,

7.1.2 if such person is a shipper, have his permit suspended for a period of not less than thirty (30) days and until such time as he demonstrates to the Department's satisfaction that adequate measures have been taken to prevent reoccurrence of the violation.

7.2. Any person who commits a second radiological violation within twelve (12) months of the first such violation shall:

7.2.1 be fined not less than Five Thousand (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00); and,

7.2.2 if such person is a shipper, have his permit suspended for a period of not more than one year and until such time as he demonstrates to the satisfaction of the Department that adequate measures have been taken to prevent reoccurrence of the violations.

7.3 Any person who commits a non-radiological violation of the provisions of this regulation shall be fined not more than One Thousand Dollars (\$1,000.00) for each violation; *provided*, that should the Department determine that a series of such violations has occurred, the Department shall suspend or revoke that person's permit for a period of not more than twelve (12) months.

7.4. Any person to whom an order, injunction, suspension, or fine issued under this article is directed shall comply therewith immediately, but on application to the Department, within twenty (20) days after the date of the order, shall be afforded a hearing within thirty (30) days of such application.

## 8. SEVERABILITY CLAUSE

8.1 It is hereby declared that each of the sections and provisions of this regulation are severable, and in the event that any one or more of such sections are declared unconstitutional or invalid, the remaining sections and provisions of this regulation shall remain in effect.

## ATTACHMENTS

Form RHA-200P  
(10/80)

### SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL APPLICATION FOR RADIOACTIVE WASTE TRANSPORT PERMIT

Instructions: Complete Items 1 through 8. Submit original and one copy to Chief, Bureau of Radiological Health, S.C. Dept. of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. All copies must be signed and dated. Additional sheets may be used if necessary. Upon approval, the Department will return one copy with your transport permit. All permit fees should be made payable to the S.C. Dept. of Health and Environmental Control, Bureau of Finance, 2600 Bull Street, Columbia, S.C. 29201. Please note on remittance, "For Radioactive Waste Transport Permit."

Note: Radioactive Waste Transport Permits may be purchased for more than one facility or location of a company, corporation, etc. However, an application shall be submitted for each facility to include the additional fee and the required certificate of insurance or bond.

- |   |  |
|---|--|
| 1. Name and Address of Applicant (Shipper):   | 2. Person responsible for Radioactive Waste shipment:<br>(a) Name:<br>(b) Title:<br>(c) Address:<br>(d) Telephone: |
| 3. Locations from which waste will be shipped if application is for more than one facility.<br>(a)<br>(b) | 4. NRC or Agreement State Radioactive Material License No. for each location.<br>(a)<br>(b)                        |
| 5. Estimated Annual Cubic Footage.  | 6. Amount of permit fee remitted.  |

#### Information to be Submitted as Attachment

7. A Certificate of Liability Insurance shall be submitted as evidence of financial ability to protect the State of South Carolina and the public at large from possible radiological injury or damage due to packaging, transportation, disposal, storage, or delivery of radioactive waste. For those applicants not maintaining liability insurance, they must deposit and maintain with the Department a cash or corporate surety bond in the amount of Five Hundred Thousand Dollars (\$500,000.00).

#### CERTIFICATE

8. In compliance with Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, I hereby certify on behalf of the above-named applicant (shipper) to the South Carolina Department of Health and Environmental Control that: (A) the above-named applicant (shipper) will comply fully with all applicable laws and administrative rules and regulations, both State and Federal, and any disposal facility radioactive material license requirements regarding the packaging, transportation, storage, disposal, and delivery of such wastes; (B) the above-named applicant (shipper) will hold the State of South Carolina harmless for all claims, actions, proceedings in law or equity arising out of radiological injury or damages to persons or property occurring during the transportation of its radioactive waste into or within the State including all costs defending same; provided, however, that nothing contained herein shall be construed as a waiver of the State's sovereign immunity; (C) the above-named applicant (shipper) has current copies of the Regulations for the Transportation of Radioactive Waste into or within the State of South Carolina, DOT Regulations 49 CFR Parts 171-179, and when applicable, the disposal site radioactive material license and the disposal site waste acceptance criteria; (D) the above-named applicant (shipper) has prepared this application to conform with South Carolina Department of Health and Environmental Control Regulation for Transportation of Radioactive Waste Into or Within South Carolina, and that all information contained herein, including any required supplements attached hereto, is true and correct to the best of my knowledge and belief.

Date \_\_\_\_\_

\_\_\_\_\_  
Typed Name and Title of Agent of Applicant  
(Shipper)

\_\_\_\_\_  
Signature

#### General Instructions and Information

1. This form is to be used to provide the Department with prior notification of radioactive waste shipments transported into or within the State of South Carolina. This notification is to be made 72 hours before the expected date of arrival in the State. All written notices should be mailed to:  
Bureau of Radiological Health  
Radioactive Waste Management Section  
S.C. Dept. of Health and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201
2. A separate form shall be submitted for each radioactive waste shipment.
3. Prior notification is required of all radioactive waste shipments as defined in paragraph 2 of Interim Regulations for the Transportation of Radioactive Waste into or within South Carolina except as provided in paragraph 4.1.2 of the Regulation.
4. The "Manifest Summary" portion of this form will satisfy requirements of providing the Department with a shipping manifest, however, it does not satisfy the requirements of shipping documents which shall accompany the shipments as required by DOT Regulations and the disposal facility's license and criteria.
5. A copy of this completed form shall be provided to the carrier and all drivers of the radioactive waste shipment.
6. Upon delivery of the shipment to the consignee, acknowledgement of receipt shall be obtained, and a copy of this form and the shipper/carrier's certification form shall be returned to the Department.

#### Specific Instructions

##### Item Number

1. Self Explanatory
2. Self Explanatory
3. This item applies to all shipments of radioactive waste transported to and within the State of South Carolina.
4. Each shipment of radioactive waste shall be identified in some manner by the shipper. This number can be a radioactive shipment record number, bill of lading number, allocation number, etc. The identification number shall only be used once to identify the one shipment for which notification is being made.
5. Self Explanatory
6. Indicate in this item the disposal facility, company, organization, etc., to which this shipment has been consigned.
7. Self Explanatory
8. For through shipments, indicate in this item estimated date shipment will pass through the state.
9. Self Explanatory
10. & 11. Applies only to exclusive use, sole use, and full load shipments.
12. All routing information must be specific. You should check with carrier to insure routes you prescribe are appropriate. The carrier is responsible to inform the Department of any changes of routes in South Carolina after departure.
- 13 thru 21. Self Explanatory

Certification: To be signed only by an authorized representative or agent of the shipper and carrier.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
Radioactive Waste Shipment Prior Notification and Manifest Form

See Reverse Side for Instructions

1. Name and Address of Shipper:	2. Person Responsible for Radioactive Waste Shipment: (a) Name (b) Title (c) Telephone No. ( )	
3. Radioactive Waste Transport Permit No.	4. Shipment Identification No.:	
5. Location from which waste will be shipped:	6. Name and Address of Consignee	
7. Scheduled Date of Departure of Shipment:	8. Estimated Date of Arrival of Shipment:	
9. Carrier:	10. Type of Transport Vehicle:	11. Trailer No. and Owner (if available)
12. Routes shipment will follow in State of South Carolina (Be Specific):		

Manifest Summary

13. Type Container or Cask:	14. Container Spec.	15. Total No. of Containers		
16. Waste Description: Physical and Chemical Form	17. Prominent Radionuclides:			
18. Total Curies:	19. Transport Group:	20. Total Cubic Feet:		
21. Waste Classification:				
<input type="checkbox"/> Radioactive LSA	<input type="checkbox"/> Bulk LSA	Normal Form	Special Form	Fissile
<input type="checkbox"/> Radioactive LSA greater than Type A quantities	<input type="checkbox"/> Limited quantities and radioactive devices	<input type="checkbox"/> Type A quantity <input type="checkbox"/> Type B quantity <input type="checkbox"/> Large quantity	<input type="checkbox"/> Type A quantity <input type="checkbox"/> Type B quantity <input type="checkbox"/> Large quantity	<input type="checkbox"/> Class I <input type="checkbox"/> Class II <input type="checkbox"/> Class III

CERTIFICATION

I hereby certify on behalf of the above-named shipper to the South Carolina Department of Health and Environmental Control that the information provided herein is complete and correct to the best of my knowledge; and that the shipper has complied with all the provisions as required by Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act.

Date \_\_\_\_\_

Typed Name and Title of Agent of Shipper

Signature

CONSIGNEE ACKNOWLEDGEMENT

This acknowledges to the South Carolina Department of Health and Environmental Control that the above-described radioactive waste shipment was received.

Date of Delivery

Signature of Consignee or authorized Agent

Typed or Printed Name and Title

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
Radioactive Waste Shipment Certification Form

General Instructions and Information: This is a two part form to be used by shippers and carriers of radioactive waste. The certifications contained herein satisfy the requirements of Section 13-7-150, of Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act. This certification along with a copy of the prior notification form shall accompany each shipment of radioactive waste into and within the State of South Carolina. The shipper is to complete his portion of the form and present it to the carrier as part of the shipping documents. Upon receipt, the carrier shall complete his portion of the form. Upon delivery of the shipment to the consignee, a copy of this certification form, and a copy of the Prior Notification and Manifest form with the consignee acknowledgement, shall be returned to the Department.

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Part I: Shipper's Certificate of Compliance

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1. Name of Shipper and Address: \_\_\_\_\_ 2. Shipment Identification No. \_\_\_\_\_

3. Transport Permit No. \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

In compliance with Act No. 429 of 1980, the South Carolina Radioactive Waste Transportation and Disposal Act, I hereby certify on behalf of the above-named shipper to the South Carolina Department of Health and Environmental Control that the above-named shipper has complied with all provisions of Act No. 429 of 1980, and all applicable laws and administrative rules and regulations, both State and Federal, regarding the packaging, transportation, storage, disposal and delivery of such wastes. I further certify that this shipment of radioactive waste has been inspected within 48 hours of the time of departure and that no items of non-compliance with applicable laws, rules or regulations were found.

Date \_\_\_\_\_

Typed Name and Title of Agent of Shipper \_\_\_\_\_

Signature \_\_\_\_\_

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Part II: Carrier's Certification

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1. Name of Carrier and Address: \_\_\_\_\_ 2. Shipment Identification No. \_\_\_\_\_

3. Transport Trailer No. \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

4. Scheduled Date of Departure of Shipment: \_\_\_\_\_ 5. Estimated Date of Arrival of Shipment: \_\_\_\_\_

Certification is hereby made to the South Carolina Department of Health and Environmental Control that: (a) the shipper has provided the carrier with a copy of the shipment manifest, the certificate of compliance, and the routing instructions; (b) the shipment of radioactive waste has been properly placarded for transport according to applicable U.S. Department of Transportation Regulations; (c) all shipping papers originated or reproduced by the carrier have been properly executed; (d) the transport vehicle has been inspected according to applicable State and Federal regulations within the prescribed intervals and that all safety and operational components are in good working order and meet the requirements of regulations; (e) all drivers who will operate the vehicle within the State of South Carolina are qualified to transport hazardous materials as specified by applicable U.S. Department of Transportation regulations; (f) the Department shall be immediately notified of any variance, occurring after departure, from the shipper's notification of primary routes in South Carolina and estimated date of arrival; (g) all applicable laws and administrative rules and regulations, both State and Federal, regarding the transportation of radioactive wastes will be complied with.

Date \_\_\_\_\_

Typed or Printed Name and Title \_\_\_\_\_

Signature \_\_\_\_\_

DHEC 803  
(5/80)

(Copies of this form may be reproduced locally as needed)

**HISTORY: Added by State Register Volume 5, Issue No. 5, eff May 22, 1981. Amended by State Register Volume 30, Issue No. 10, eff October 27, 2006.**

**61–84. STANDARDS FOR LICENSING COMMUNITY RESIDENTIAL CARE FACILITIES.**

(Statutory Authority: 1976 Code Section 44–7–260)

**Editor’s Note**

Unless otherwise noted, the following constitutes the history for 6–84, Section 100 to Section 2901.

**HISTORY:** Added by State Register Volume 10, Issue No. 5, eff May 23, 1986. Amended by State Register Volume 15, Issue No. 5, eff May 24, 1991; State Register Volume 25, Issue No. 7, eff July 27, 2001; State Register Volume 34, Issue No. 6, eff June 25, 2010.

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## SECTION 100

### DEFINITIONS AND LICENSE REQUIREMENTS

#### **101. Definitions.**

For the purpose of this regulation, the following definitions shall apply:

- A. Abuse. Physical abuse or psychological abuse.
  - 1. Physical Abuse. The act of intentionally inflicting or allowing to be inflicted physical injury on a resident by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a licensed physician or other legally authorized healthcare professional or that is part of a written ICP by a physician or other legally authorized healthcare professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between residents.
  - 2. Psychological Abuse. The deliberate use of any oral, written, or gestured language or depiction that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability, including threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.
- B. Activities of Daily Living (ADL). Those personal functions performed by an individual in the course of a day that include, but are not limited to, walking; bathing; shaving; brushing teeth; combing hair; dressing; eating; getting in or getting out of bed; toileting; ambulating; doing laundry; cleaning room; managing money; shopping; using public transportation; making telephone calls; obtaining appointments; administration of medication; and other similar activities.
- C. Administrator. The staff member designated by the licensee to have the authority and responsibility to manage the facility, is in charge of all functions and activities of the facility, and is appropriately licensed as a community residential care facility administrator by the S.C. State Board of Long Term Health Care Administrators.
- D. Adult. A person 18 years of age or older.
- E. Airborne Infection Isolation (AII). A room designed to maintain Airborne Infection Isolation, formerly called a negative pressure isolation room. An Airborne Infection Isolation room is a single-occupancy resident care room used to isolate persons with suspected or confirmed infectious tuberculosis (TB) disease. Environmental factors are controlled in Airborne Infection Isolation rooms to minimize the transmission of infectious agents that are usually spread from person-to-person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. Airborne Infection Isolation rooms may provide negative pressure in the room (so that air flows under the door gap into the room), an air flow rate of six to twelve (6 to 12) air changes per hour (ACH), and direct exhaust of

air from the room to the outside of the building or recirculation of air through a high efficiency particulate air (HEPA) filter.

F. Alzheimer's Special Care Unit or Program. A facility or area within a facility providing a secure, special program or unit for residents with a diagnosis of probable Alzheimer's disease and/or related dementia to prevent or limit access by a resident outside the designated or separated areas, and that advertises, markets, or otherwise promotes the facility as providing specialized care/services for persons with Alzheimer's disease and/or related dementia or both.

G. Annual. A time period that requires an activity to be performed at least every twelve to thirteen (12 to 13) months.

H. Assessment. A procedure for determining the nature and extent of the problem(s) and needs of a resident/potential resident to ascertain if the facility can adequately address those problems, meet those needs, and to secure information for use in the development of the individual care plan. Included in the process are an evaluation of the physical, emotional, behavioral, social, spiritual, nutritional, recreational, and, when appropriate, vocational, educational, legal status/needs of a resident/potential resident. Consideration of each resident's needs, strengths, and weaknesses shall be included in the assessment.

I. Authorized Healthcare Provider. An individual authorized by law and currently licensed in South Carolina to provide specific treatments, care, or services to residents, e.g., advanced practice registered nurse, physician assistant.

J. Blood Assay for *Mycobacterium tuberculosis* (BAMT). A general term to refer to *in vitro* diagnostic tests that assess for the presence of tuberculosis (TB) infection with *M. tuberculosis*. This term includes, but is not limited to, IFN-gamma release assays (IGRA).

K. Boarding House. A business/entity which provides room and board to an individual(s) and which does not provide a degree of personal care to more than one individual.

L. Community Residential Care Facility (CRCF). A facility which offers room and board and which, unlike a boarding house, provides/coordinates a degree of personal care for a period of time in excess of 24 consecutive hours for two or more persons, 18 years old or older, not related to the licensee within the third degree of consanguinity. It is designed to accommodate residents' changing needs and preferences, maximize residents' dignity, autonomy, privacy, independence, and safety, and encourage family and community involvement. Included in this definition is any facility (other than a hospital), which offers or represents to the public that it offers a beneficial or protected environment specifically for individuals who have mental illness or disabilities. These facilities may be referred to as "assisted living" provided they meet the above definition of community residential care facility.

M. Contact Investigation. Procedures that occur when a case of infectious TB is identified, including finding persons (contacts) exposed to the case, testing and evaluation of contacts to identify Latent TB Infection (LTBI) or TB disease, and treatment of these persons, as indicated.

N. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act and the South Carolina Controlled Substances Act.

O. Consultation. A visit by Department representative(s) who will provide information to the licensee with the goal of facilitating compliance with these regulations.

P. Department. The S.C. Department of Health and Environmental Control (DHEC).

Q. Designee. A staff member designated by the administrator to act on his/her behalf.

R. Direct Care Staff Member/Direct Care Volunteer. Those individuals who provide assistance with activities of daily living to residents.

S. Discharge. The point at which residence in a facility is terminated and the facility no longer maintains active responsibility for the care of the resident.

T. Dispensing Medication. The transfer or possession of one (1) or more doses of a medication or device by a licensed pharmacist or individual as permitted by law, to the ultimate consumer or his or her agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by a resident.

U. Exploitation. 1) Causing or requiring a resident to engage in an activity or labor that is improper, unlawful, or against the reasonable and rational wishes of a resident. Exploitation does not

include requiring a resident to participate in an activity or labor that is a part of a written ICP or prescribed or authorized by the resident's attending physician; 2) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a resident by an individual for the profit or advantage of that individual or another individual; or 3) causing a resident to purchase goods or services for the profit or advantage of the seller or another individual through undue influence, harassment, duress, force, coercion, or swindling by overreaching, cheating, or defrauding the resident through cunning arts or devices that delude the resident and cause him or her to lose money or other property.

V. Facility. A community residential care facility licensed by the Department.

W. Health Assessment. An evaluation of the health status of a staff member/volunteer by a physician, other authorized healthcare provider, or registered nurse, pursuant to written standing orders and/or protocol approved by a physician's signature. The standing orders/protocol shall be reviewed annually by the physician, with a copy maintained at the facility.

X. Incident. An unusual unexpected adverse event resulting in harm, injury, or death of staff or residents, accidents, *e.g.*, medication errors, adverse medication reactions, elopement of a resident.

Y. Individual Care Plan (ICP). A documented regimen of appropriate care/services or written action plan prepared by the facility for each resident based on resident's needs and preferences and which is to be implemented for the benefit of the resident.

Z. Inspection. A visit by a Department representative(s) for the purpose of determining compliance with this regulation.

AA. Investigation. A visit by a Department representative(s) to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to this regulation.

BB. Latent TB Infection (LTBI). Infection with *M. tuberculosis*. Persons with Latent TB Infection carry the organism that causes TB but do not have TB disease, are asymptomatic, and are noninfectious. Such persons usually have a positive reaction to the tuberculin skin test and/or positive BAMT.

CC. Legend Drug.

1. A drug when, under Federal law, is required, prior to being dispensed or delivered, to be labeled with any of the following statements:

- a. "Caution: Federal law prohibits dispensing without prescription";
- b. "Rx only" or;

2. A drug which is required by any applicable Federal or State law to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only;

3. Any drug products considered to be a public health threat, after notice and public hearing as designated by the S.C. Board of Pharmacy; or

4. Any prescribed compounded prescription drug within the meaning of the Pharmacy Act.

DD. License. The authorization to operate a facility as defined in this regulation and as evidenced by a current certificate issued by the Department to a facility.

EE. Licensed Nurse. A person to whom the S.C. Board of Nursing has issued a license as a registered nurse or licensed practical nurse or an individual licensed as a registered nurse or licensed practical nurse who resides in another state that has been granted multi-state licensing privileges by the South Carolina Board of Nursing may practice nursing in any facility or activity licensed by the Department subject to the provisions and conditions as indicated in the Nurse Licensure Compact Act.

FF. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care/services at a facility and with whom rests the ultimate responsibility for compliance with this regulation.

GG. Local Transportation. The maximum travel distance the facility shall undertake, at no cost to the resident, as addressed by the resident written agreement, to secure/provide health care for resident. Local transportation shall be based on a reasonable assessment of the proximity of customary health care resources in the region, *e.g.*, nearest hospitals, physicians and other health care providers, and appropriate consideration of resident preferences.

HH. Medication. A substance that has therapeutic effects, including, but not limited to, legend, nonlegend, herbal products, over-the counter, nonprescription, vitamins, and nutritional supplements, etc.

II. Neglect. The failure or omission of a direct care staff member or direct care volunteer to provide the care, goods, or services necessary to maintain the health or safety of a resident including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Failure to provide adequate supervision resulting in harm to residents, including altercations or acts of assault between residents, may constitute neglect. Neglect may be repeated conduct or a single incident that has produced or could result in physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

JJ. Nonlegend Drug. A drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws of this State and the Federal government.

KK. Nursing Home. A facility with an organized nursing staff to maintain and operate organized facilities and services to accommodate two (2) or more unrelated individuals over a period exceeding twenty-four (24) hours which is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing intermediate or skilled care for persons who are not in need of hospital care.

LL. Peak Hours. Those hours from 7 a.m. to 7 p.m., or as otherwise approved in writing by the Department.

MM. Personal Care. The provision by the staff members/direct care volunteers of the facility of one or more of the following services, as required by the individual care plan or orders by the physician or other authorized healthcare provider or as reasonably requested by the resident, including:

1. Assisting and/or directing the resident with activities of daily living;
2. Being aware of the resident's general whereabouts, although the resident may travel independently in the community;
3. Monitoring of the activities of the resident while on the premises of the residence to ensure his/her health, safety, and well-being.

NN. Personal Monies. All monies which are available to the resident for his/her personal use, including family donations.

OO. Physical Examination. An examination of a resident by a physician or other authorized healthcare provider which addresses those issues identified in Section 1101 of this regulation.

PP. Physician. An individual currently licensed to practice medicine by the S.C. Board of Medical Examiners.

QQ. Physician Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.

RR. Private Sitter. A private contractor not associated with or employed by the facility with whom the resident or the resident's responsible party contracts to provide sitter or companion services.

SS. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care/services, identify the ways to improve its performance, and take actions that result in higher quality of care/services for the facility's residents.

TT. Quarterly. A time period that requires an activity to be performed at least four (4) times a year within intervals ranging from eighty-one to ninety-nine (81 to 99) days.

UU. Related/Relative. This degree of kinship is considered "within the third degree of consanguinity," *e.g.*, a spouse, son, daughter, sister, brother, parent, aunt, uncle, niece, nephew, grandparent, great-grandparent, grandchild, or great-grandchild.

VV. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a 36-month period. The time-period determinant of repeat violation status is applicable in instances when there are ownership changes.

WW. Resident. Any individual, other than staff members/volunteers or owner and their family members, who resides in a facility.

XX. Resident Room. An area enclosed by four ceiling high walls that can house one or more residents of the facility.

YY. Respite Care. Short-term care (a period of six weeks or less) provided to an individual to relieve the family members or other persons caring for the individual, but for not less than twenty-four (24) hours.

ZZ. Responsible Party. A person who is authorized by law to make decisions on behalf of a resident, to include, but not be limited to, a court-appointed guardian (or legal guardian as referred to in the Resident's Bill of Rights) or conservator, or health care or other durable power of attorney.

AAA. Restraint. Any means by which movement of a resident is inhibited, i.e., physical, mechanical, chemical. In addition, devices shall be considered a restraint if a resident is unable to easily release from the device.

BBB. Revocation of License. An action by the Department to cancel or annul a facility license by recalling, withdrawing, or rescinding its authority to operate.

CCC. Risk Assessment. An initial and ongoing evaluation of the risk for transmission of *M. tuberculosis* in a particular healthcare setting. To perform a risk assessment, the following factors shall be considered: the community rate of TB, number of TB patients encountered in the setting, and the speed with which patients with TB disease are suspected, isolated, and evaluated. The TB risk assessment determines the types of administrative and environmental controls and respiratory protection needed for a setting.

DDD. Self-Administration. A procedure by which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself without prompting. The procedure is performed without assistance and includes removing an individual dose from a previously dispensed and labeled container (including a unit dose container), verifying it with the directions on the label, taking it orally, injecting, inserting, or applying topically or otherwise administering the medication.

EEE. Sponsor. The public agency or individual involved in one or more of the following: protective custody authorized by law, placement, providing ongoing services, or assisting in providing services to a resident(s) consistent with the wishes of the resident or responsible party or specific administrative or court order.

FFF. Staff Member. An adult, to include the administrator, who is a compensated employee of the facility on either a full or part-time basis.

GGG. Suspension of License. An action by the Department requiring a facility to cease operations for a period of time or to require a facility to cease admitting residents, until such time as the Department rescinds that restriction.

HHH. Volunteer. An adult who performs tasks at the facility at the direction of the administrator without compensation.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## **102. References.**

A. The following Departmental publications are referenced in these regulations:

1. R.61–20, *Communicable Diseases*;
2. R.61–25, *Retail Food Establishments*;
3. R.61–51, *Public Swimming Pools*;
4. R.61–58, *State Primary Drinking Water Regulations*;
5. R.61–67, *Standards for Wastewater Facility Construction*;
6. R.61–105, *South Carolina Infectious Waste Management Regulations*;

B. The following non-Departmental publications are referenced within this regulation:

1. Underwriters Laboratories--Fire Resistance Directory;
2. Underwriters Laboratories--Building Materials List;
3. Occupational Safety and Health Act of 1970 (OSHA);

4. Omnibus Adult Protection Act;
5. Alzheimer's Special Care Disclosure Act;
6. Food and Nutrition Board of the National Research Council, National Academy of Sciences;
7. National Sanitation Federation;
8. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, December 30, 2005;
9. U.S. Pharmacopoeia.

C. The Department shall enforce new laws that may change the above-noted standards and at its discretion adopt revisions to the above noted references.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **103. License Requirements (II).**

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise/market) as a community residential care facility in S.C. without first obtaining a license from the Department. The facility shall not admit residents prior to the effective date of the license. When it has been determined by the Department that room, board, and a degree of personal care to two or more adults unrelated to the owner is being provided at a location, and the owner has not been issued a license from the Department to provide such care, the owner shall cease operation immediately and ensure the safety, health, and well-being of the occupants. Current/previous violations of the S.C. Code and/or Department regulations may jeopardize the issuance of a license for the facility or the licensing of any other facility, or addition to an existing facility which is owned/operated by the licensee. The facility shall provide only the care/services it is licensed to provide pursuant to the definitions in Sections 101.L and 101.KK of this regulation. (I)

B. Compliance. An initial license shall not be issued to a proposed facility that has not been previously and continuously licensed under Department regulations until the licensee has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility/activity licensed by the Department makes application for another facility or increase in licensed bed capacity, the currently licensed facility/activity shall be in substantial compliance with the applicable standards prior to the Department issuing a license to the proposed facility or amended license to the existing facility. A copy of the licensing standards shall be maintained at the facility and accessible to all staff members/volunteers. Facilities shall comply with applicable local, State, and Federal laws, codes, and regulations.

C. Compliance with Structural Standards. Facilities licensed at the time of promulgation of this regulation, shall be allowed to continue utilizing the previously-licensed structure without modification.

D. Licensed Bed Capacity. No facility that has been authorized to provide a set number of licensed beds, as identified on the face of the license, shall exceed the bed capacity. No facility shall establish new care/services or occupy additional beds or renovated space without first obtaining authorization from the Department. Beds for use of staff members/volunteers are not included in the licensed bed capacity number, provided such beds and locations are so identified and used exclusively by staff members/volunteers. (I)

E. Persons Received in Excess of Licensed Bed Capacity. No facility shall receive for care or services persons in excess of the licensed bed capacity, except in cases of justified emergencies. (I)

**EXCEPTION:** In the event that the facility temporarily provides shelter for evacuees who have been displaced due to a disaster, then for the duration of that emergency, provided the health, safety, and well-being of all residents are not compromised, it is permissible to temporarily exceed the licensed capacity for the facility in order to accommodate these individuals (See Section 606).

F. Living Quarters for Staff Members. In addition to residents, only staff members, volunteers, or owners of the facility and members of the owner's immediate family may reside in facilities licensed under this regulation. Resident rooms shall not be utilized by any individuals other than facility residents, nor shall bedrooms of staff members/family members of the owner or the licensee be utilized by residents. Staff members/family members of the owner or licensee/volunteers shall not use resident living rooms, recreational areas or dining rooms unless they are on duty.

G. Issuance and Terms of License.

1. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, services, personal safety, fire safety, or the well-being of any resident or occupant of a facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State.

4. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but which are not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, *e.g.*, interstate highways, shall not be considered as dividing otherwise adjoining or contiguous property. Facilities owned by the same entity, separate licenses are not required for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

6. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

7. Facilities may furnish respite care provided compliance with the standards of this regulation are met.

H. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in S.C. The Department shall determine if names are similar. If the facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

I. Application. Applicants for a license shall submit to the Department a complete and accurate application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes both the applicant's oath assuring that the contents of the application are accurate/true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two of its officers; or in the case of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his/her address is different from that of the facility, the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. Corporations or limited partnerships, limited liability companies or any other organized business entity must be registered with the S.C. Office of the Secretary of State if required to do so by S.C. state law.

J. Licensing Fees. The annual license fee shall be \$10.00 per licensed bed or \$75.00 whichever is greater. Such fee shall be made payable by check or credit card to the Department and is not refundable. Fees for additional beds shall be prorated based upon the remaining months of the licensure year. If the application is denied or withdrawn, a portion of the fee may be refunded based upon the remaining months of the licensure year, or \$75.00 whichever is lesser.

K. Late Fee. Failure to submit a renewal application or fee 30 days or more after the license expiration date may result in a late fee of \$75.00 or 25% of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time-period specified by the Department may result in an enforcement action.

L. License Renewal. For a license to be renewed, applicants shall file an application with the Department, pay a license fee, and shall not be undergoing enforcement actions by the Department. If the license renewal is delayed due to enforcement actions, the renewal license shall be issued only when the matter has been resolved satisfactorily by the Department, or when the adjudicatory process is completed, whichever is applicable.

M. Change of License.

1. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

- a. Change of ownership;
- b. Change of licensed bed capacity;
- c. Change of facility location from one geographic site to another.

2. Changes in facility name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee.

N. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where the Department determines the health, safety, and wellbeing of the residents are not compromised, and provided the standard is not specifically required by statute.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015; State Register Volume 39, Issue No. 9, Doc. No. 4484, eff September 25, 2015 (errata).

## SECTION 200

### ENFORCING REGULATIONS

#### **201. General.**

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **202. Inspections/Investigations.**

A. Inspections by the Department shall be conducted prior to initial licensing of a facility and subsequent inspections conducted as deemed appropriate by the Department. (I)

B. All facilities are subject to inspection/investigation at any time without prior notice by individuals authorized by S.C. Code of Laws. When staff members/volunteers/residents are absent, the facility shall provide information to those seeking legitimate access to the facility, including visitors, as to the expected return of staff members/volunteers/residents. (I)

C. Individuals authorized by S.C. law shall be allowed to enter the facility for the purpose of inspection and/or investigation and granted access to all properties and areas, objects, and records in a timely manner, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. Physical area of inspections shall be determined by the extent to which there is potential impact/affect upon residents as determined by the inspector, e.g., flammable liquids unsecured in a staff member's bedroom, attic, or basement. (I)

D. When there is noncompliance with the licensing standards, the facility shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection/investigation. The written plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;
2. The actions taken to prevent recurrences (actual and similar);
3. The actual or expected completion dates of those actions.

E. Reports of inspections or investigations conducted by the Department, including the facility response, shall be provided to the public upon written request with the redaction of the names of those individuals in the report as provided by 1976 Code Sections 44-7-310 and 44-7-315.

F. In accordance with 1976 Code Section 44-7-270, the Department may charge a fee for plan inspections, construction inspections, and licensing inspections.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **203. Consultations.**

Consultations shall be provided by the Department as requested by the facility or as deemed appropriate by the Department.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **SECTION 300**

### **ENFORCEMENT ACTIONS**

#### **301. General.**

When the Department determines that a facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice to the licensee, may impose a monetary penalty, deny, suspend, or revoke licenses.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **302. Violation Classifications.**

Violations of standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a negative impact on the health, safety or well-being of persons in the facility. The citation of a Class II violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation shall specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time shall be considered a subsequent violation.

D. The notations, “(I)” or “(II)” placed within sections of this regulation, indicate those standards are considered Class I or II violations if they are not met, respectively. Failure to meet standards not so annotated are considered Class III violations.

E. In determining an enforcement action the Department shall consider the following factors:

1. Specific conditions and their impact or potential impact on health, safety or well-being of the residents including, but not limited to: deficiencies in medication management, such as evidence that residents are not routinely receiving their prescribed medications; serious waste water problems, such as toilets not operating or open sewage covering the grounds; housekeeping/maintenance/fire and life safety-related problems that pose a health threat to the residents; power/water/gas or other utility and/or service outages; residents exposed to air temperature extremes that jeopardize their health; unsafe condition of the building/structure such as a roof in danger of collapse; indictment of an administrator for malfeasance or a felony, which by its nature, such as drug dealing, indicates a threat to the residents; direct evidence of abuse, neglect, or exploitation; lack of food or evidence that the residents are not being fed properly; no staff available at the facility with residents present; unsafe procedures/treatment being practiced by staff; (I)

2. Repeated failure of the licensee/facility to pay assessed charges for utilities and/or services resulting in repeated or ongoing threats to terminate the contracted utilities and/or services. (II)

3. Efforts by the facility to correct cited violations;

4. Overall conditions of the facility;

5. History of compliance; and

6. Any other pertinent conditions that may be applicable to current statutes and regulations.

F. When imposing a monetary penalty, the Department may invoke 1976 Code Section 44-7-320 (C) to determine the dollar amount or may utilize the following schedule:

**Frequency of violation of standard within a 36-month period:**

**MONETARY PENALTY RANGES**

FREQUENCY	CLASS I	CLASS II	CLASS III
1st	\$500-1,500	\$300-800	\$100-300
2nd	1000-3000	500-1500	300-800
3rd	2000-5000	1000-3000	500-1500
4th	5000	2000-5000	1000-3000
5th	5000	5000	2000-5000
6th	5000	5000	5000

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

SECTION 400

POLICIES AND PROCEDURES

**401. General (II).**

Written policies and procedures addressing each section of this regulation regarding resident care, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation. The policies and procedures shall address the provision of any special care offered by the facility which would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically/developmentally disabled, in accordance with any laws which pertain to that service offered, *e.g.*, Alzheimer's Special Care Disclosure Act. Facilities shall establish a time-period for review of all policies and procedures and such reviews shall be documented. These policies and procedures shall be accessible and available to staff at all times, and shall be available to residents and/or their responsible parties upon their requests for inspection.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

SECTION 500

STAFF/TRAINING

**501. General (II).**

A. Before being employed or contracted as a staff member/direct care volunteer by a licensed community residential care facility, a person shall undergo a criminal background check pursuant to 1976 Code Section 44-7-2910. Staff members/direct care volunteers/private sitters of the facility shall not have a prior conviction or pled no contest (*nolo contendere*) to abuse, neglect, or exploitation of a child or a vulnerable adult as defined in 1976 Code Section 43-35-10, *et seq.* (I)

B. Staff members/volunteers shall be provided the necessary training to perform the duties for which they are responsible in an effective manner. (I)

C. No supervision/care/services shall be provided to individuals who are not residents of the facility other than children of owners of the facility who are residing in the facility. Minimum staffing requirements shall be applied in instances where children of owners reside in the facility, *i.e.*, children of owners shall be considered as residents in the staff/resident ratio. (I)

D. Staff members/direct care volunteers shall have at least the following qualifications: (I)

1. Capable of rendering care/services to residents;
2. Sufficient education to be able to perform their duties, and to speak, read, and write English;
3. Demonstrate a working knowledge of applicable regulations.

E. There shall be accurate and current information maintained regarding all staff members/volunteers of the facility, to include at least address, phone number, and personal/work/training background.

F. All staff members/direct care volunteers shall be assigned certain duties and responsibilities which shall be in writing and in accordance with the individual's capability.

G. When a facility engages a source other than the facility to provide services, normally provided by the facility, e.g., staffing, training, recreation, food service, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, services, and rights.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **502. Administrator (II).**

A. The facility administrator shall be licensed as a CRCF administrator in accordance with 1976 Code Section 44-7-260.

B. The administrator shall exercise judgment that reflects that s/he is capable of meeting the responsibilities involved in operating a facility to ensure that it is in compliance with these regulations, and shall demonstrate adequate knowledge of these regulations.

C. A staff member shall be designated in writing to act in the absence of the administrator, e.g., a listing of the lines of authority by position title, including the names of the persons filling these positions.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **503. Staff (I).**

A. There shall be a staff member actively on duty and present in the facility at all times that the facility is occupied by residents and to whom the residents can immediately report injuries, symptoms of illness, or emergencies. This staff member shall recognize and report significant changes in the physical or mental condition of each resident and shall ensure that appropriate action is taken.

B. The number and qualifications of staff members/direct care volunteers shall be determined by the number and condition of the residents. There shall be sufficient staff members/direct care volunteers to provide supervision, direct care and basic services for all residents. The minimum number of staff members/direct care volunteers that shall be maintained in all facilities:

1. In each building, there shall be at least one staff member/direct care volunteer for each eight (8) residents or fraction thereof on duty during all periods of peak hours.

2. In each building, during non-peak hours, there shall be at least one staff member/volunteer on duty for each thirty (30) residents or fraction thereof. A staff member/volunteer shall be awake and dressed at all times. Staff member(s)/volunteer(s) shall be able to appropriately respond to resident needs during non-peak hours.

3. In facilities that are licensed for more than 10 beds, and the facility is of multi-floor design, there shall be a staff member available on each floor at all times residents are present on that floor.

C. The facility shall maintain documentation to ensure the facility meets Sections 503.B.1 and 503.B.2.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **504. Inservice Training (I).**

A. Documentation of all inservice training shall be signed and dated by both the individual providing the training and the individual receiving the training. The following training shall be provided by appropriate resources, e.g., licensed/registered/certified persons, books, electronic media, etc., to all staff members/direct care volunteers and private sitters in the context of their job duties and responsibilities, prior to resident contact and at a frequency determined by the facility, but at least annually unless otherwise specified by certificate, e.g., cardiopulmonary resuscitation (CPR):

1. Basic first-aid to include emergency procedures as well as procedures to manage/care for minor accidents or injuries;

2. Procedures for checking and recording vital signs (for designated staff members only);

3. Management/care of persons with contagious and/or communicable disease, e.g., hepatitis, tuberculosis, HIV infection;
  4. Medication management including storage, administration, receiving orders, securing medications, interactions, and adverse reactions;
  5. Depending on the type of residents, care of persons specific to the physical/mental condition being cared for in the facility, e.g., dementia; cognitive disability; mental illness; or aggressive, violent, and/or inappropriate behavioral symptoms etc., to include communication techniques (cueing and mirroring), understanding and coping with behaviors, safety, activities, etc.
  6. Use of restraint techniques;
  7. OSHA standards regarding blood-borne pathogens;
  8. Cardiopulmonary resuscitation for designated staff members/direct care volunteers to ensure that there is a certified staff member/direct care volunteer present whenever residents are in the facility;
  9. Confidentiality of resident information and records;
  10. Bill of Rights for Long-Term Care Facilities per 1976 Code Section 44-81-10, *et seq.*;
  11. Fire response training within twenty-four (24) hours of their first day on the job in the facility (See Section 1503);
  12. Emergency procedures/disaster preparedness within twenty-four (24) hours of their first day on the job in the facility (See Section 1400); and
  13. Activity training (for the designated staff only).
- B. Job Orientation.

All new staff members/direct care volunteers shall have documented orientation to the organization and environment of the facility, specific duties and responsibilities of staff members/direct care volunteers, and residents' needs within twenty-four (24) hours of their first day on the job in the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **505. Health Status (I).**

- A. All staff members/direct care volunteers who have contact with residents, including food service staff members/direct care volunteers, shall have a health assessment within 12 months prior to initial resident contact. The health assessment shall include tuberculin skin testing as described in Section 1702.
- B. If a staff member/direct care volunteer is working at multiple facilities operated by the same licensee, copies of records for tuberculin skin testing and the pre-employment health assessment shall be accessible at each facility. For any other staff member/direct care volunteer, a copy of the tuberculin skin testing shall be acceptable provided the test had been completed within three months prior to resident contact.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **506. Private Sitters (II).**

- A. Unless the written agreement (See Section 901.A) between a resident and the facility prohibits the use of private sitters, the facility shall establish a formalized private sitter program directed by a facility staff member so that residents or their responsible party may contract for sitter services.
1. The facility shall assure that private sitters have been chosen in accordance with the Residents Bill of Rights.
  2. Facilities allowing the use of private sitters shall establish written policies and procedures for private sitters.
  3. Prior to resident contact, the private sitter shall have documented orientation to the organization and environment of the facility. Orientation to the facility shall consist, at least, of the following:
    - a. Residents' rights;
    - b. Confidentiality;

- c. Disaster preparedness;
  - d. Emergency response procedures;
  - e. Safety procedures and precautions; and
  - f. Infection control.
4. There shall be accurate current information maintained regarding private sitters including:
- a. Name, address and telephone number;
  - b. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, training, and duties;
  - c. Date of initial resident contact may be maintained by the facility, if applicable.
- B. The facility shall maintain the following documentation regarding private sitters:
- 1. A health assessment (in accordance with Section 505.A) within twelve (12) months prior to initial resident contact or his or her first day working as a private sitter;
  - 2. A criminal record check (See Section 501.A) completed prior to working as a private sitter;
  - 3. Determination of TB status (See Section 1702.D.) prior to initial resident contact or his or her first day working as a private sitter.
- C. Private sitters shall not be included in the minimum staffing requirements of Section 503.B.
- D. Private sitters shall sign in and sign out with facility staff upon entering or leaving the facility. Private sitters shall display identification in accordance with facility policies and procedures that is visible at all times while on duty.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015; State Register Volume 39, Issue No. 9, Doc. No. 4484, eff September 25, 2015 (errata).**

## SECTION 600

### REPORTING

#### **601. Accidents and/or Incidents.**

A. A facility shall maintain a record of each accident and/or incident, including usage of mechanical/physical restraints, involving residents, staff members or volunteers, occurring in the facility or on the facility grounds. A facility's record of each accident and/or incident shall be documented, reviewed, investigated, and if necessary, evaluated in accordance with facility policies and procedures, and retained by the facility for six (6) years after the resident stops receiving services.

B. A facility shall report every serious accident and/or incident that results in resident's death or significant loss of function or damage to a body structure, not related to the natural course of a resident's illness or underlying condition or normal course of treatment, and resulting from an accident and/or incident occurring to resident within the facility or on the facility grounds. Serious accidents and/or incidents requiring reporting include, but are not limited to:

- 1. Crime(s) against resident;
- 2. Confirmed or suspected cases of abuse, neglect, or exploitation;
- 3. Medication error with adverse reaction;
- 4. Hospitalization as a result of the accident and/or incident;
- 5. Severe hematoma, laceration or burn requiring medical attention or hospitalization;
- 6. Fracture of bone or joint;
- 7. Severe injury involving use of restraints;
- 8. Attempted suicide; or
- 9. Fire.

C. A facility shall immediately report every serious accident and/or incident to the attending physician, next-of-kin or responsible party, and the Department via telephone, email or facsimile within twenty-four (24) hours of the serious accident and/or incident.

D. A facility shall submit a written report of its investigation of every serious accident and/or incident to the Department within five (5) days of the serious accident and/or incident. A facility's written report to the Department shall provide at a minimum:

1. Facility name;
2. License number;
3. Type of accident and/or incident;
4. Date accident and/or incident occurred;
5. Number of residents directly injured or affected;
6. Resident record number or last four (4) digits of Social Security Number;
7. Resident age and sex;
8. Number of staff directly injured or affected;
9. Number of visitors directly injured or affected;
10. Name(s) of witness(es);
11. Identified cause of accident and/or incident;
12. Internal investigation results if cause unknown; and
13. Brief description of the accident and/or incident including the location of occurrence and treatment of injuries.

E. A facility shall retain a report of every serious accident and/or incident with all of the information provided to the Department and the names, injuries, and treatments associated with each resident, staff and/or visitor involved. A facility shall retain all serious accident and/or incident records for six (6) years after the resident stops receiving services.

F. The administrator or his or her designee shall report every incident involving a resident that leaves the premises for more than twenty-four (24) hours without notice to staff members of intent to leave to local law enforcement, the resident's responsible party, and the Department. The administrator or his or her designee shall immediately notify local law enforcement and the responsible party by telephone when a cognitively impaired resident leaves the premises for any amount of time without notice to staff members.

G. The administrator or his or her designee shall report changes in a resident's condition, to the extent that serious health concerns and/or injuries, *e.g.*, fracture, behavioral changes or heart attack, are evident, to the attending physician and the responsible party immediately, not to exceed twenty-four (24) hours, consistent with the severity or urgency of the condition in accordance with facility policies and procedures. (I)

H. The administrator or his or her designee shall report abuse and suspected abuse, neglect, or exploitation of residents to the South Carolina Long-Term Care Ombudsman Program in accordance with 1976 Code Section 43-35-25.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## **602. Fire/Disasters (II).**

A. The administrator or his or her designee shall notify the Department via telephone or email of any fire in the facility and submit to the Department a complete written report including fire department reports, if any within seventy-two (72) hours of the occurrence of the fire.

B. The administrator or his or her designee shall report any natural disaster or fire requiring displacement of the residents or jeopardizing or potentially jeopardizing the safety of the residents to the Department via telephone or email immediately, with a complete written report including the fire department or other reporting authority (as applicable) submitted within seventy-two (72) hours.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## **603. Communicable Diseases and Animal Bites (I).**

All cases of diseases and animal bites which are required to be reported to the appropriate county health department shall be accomplished in accordance with R.61-20.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

#### **604. Administrator Change.**

The licensee shall notify the Department via telephone or email within seventy-two (72) hours of any change in administrator status. The licensee shall provide the Department in writing within ten (10) days the name of the newly-appointed administrator, the effective date of the appointment, copy of the administrator's license and the hours each day the individual will be working as the administrator of the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **605. Accounting of Controlled Substances (II).**

Any facility registered with the Department's Bureau of Drug Control and the United States Drug Enforcement Agency shall report any theft or loss of controlled substances to local law enforcement and to the Department's Bureau of Drug Control upon discovery of the loss/theft.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **606. Emergency Placement Notification.**

In instances where evacuees have been relocated, the Department shall be notified by the relocating facility in writing no later than the following workday, the name of the individuals relocated and the name, address and phone number of the sheltering facility(ies) to which the residents have been relocated.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **607. Facility Closure.**

A. Prior to the permanent closure of a facility, the licensee shall notify the Department in writing of the intent to close and the effective closure date. Within 10 days of the closure, the facility shall notify the Department of the provisions for the maintenance of the records, the identification of those residents displaced, the relocated site, and the dates and amounts of resident refunds. On the date of closure, the license shall be returned to the Department.

B. In instances where a facility temporarily closes, the licensee shall notify the Department in writing within fifteen (15) days prior to temporary closure. In the event of temporary closure due to an emergency, the facility shall notify the Department within twenty-four (24) hours of the closure via telephone, email or facsimile. At a minimum this notification shall include, but not be limited to: the reason for the temporary closure, the location where the residents have been/will be transferred, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards of the facility prior to its reopening. If the facility is closed for a period longer than one year, and there is a desire to re-open, the facility shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **608. Zero Census.**

In instances when there have been no residents in a facility for any reason for a period of 90 days or more, the facility shall notify the Department in writing that there have been no admissions, no later than the 100th day following the date of departure of the last active resident. At the time of that notification, the Department shall consider, upon appropriate review of the situation, the necessity of inspecting the facility prior to any new and/or re-admissions to the facility. The facility shall still submit an application and pay the licensing fee to keep the license active, even though the facility is at zero census or temporarily closed. If the facility has no residents for a period longer than one year, and there is a desire to admit a resident, the facility shall re-apply to the Department for licensure and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

SECTION 700  
RESIDENT RECORDS

**701. Content (II).**

A. The facility shall initiate and maintain on site an organized record for each resident. The record shall contain sufficient documented information to identify the resident and the agency and/or person responsible for each resident; support the diagnosis, secure the appropriate care/services (as needed); justify the care/services provided to include the course-of-action taken and results; the symptoms or other indications of sickness or injury; changes in physical/mental condition; the response/reaction to care, medication, and diet provided; and promote continuity of care among providers, consistent with acceptable standards of practice. All entries shall be written legibly in ink, typed or electronic media, and signed, and dated.

B. Specific entries/documentation shall include at a minimum:

1. Consultations by physicians or other authorized healthcare providers;
2. Orders and recommendations for all medication, care, services, procedures, and diet from physicians or other authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted. Verbal orders received shall be documented and include the date/time of receipt of the order, description of the order, and identification of the individual receiving the order;
3. Care/services provided, e.g., hospice, home health;
4. Medications administered and procedures followed if an error is made;
5. Special procedures and preventive measures performed;
6. Notes of observation. In instances that involve significant changes in a resident's medical condition and/or the occurrence of a serious incident, notes of observation shall be documented at least daily until the condition is stabilized and/or the incident is resolved. In all other instances, notes of observation for residents shall be documented at least monthly;
7. Time, circumstances, and condition of discharge, transfer, or death;
8. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician, plan for payment, and plan for securing medications;
9. Special information, e.g., do-not-resuscitate orders, allergies, power of attorney, responsible party, etc.
10. Photograph of resident. Resident photographs shall be at a minimum two and one half inches by three and one half inches (2 1/2 by 3 1/2 inches) in size, dated and no more than twenty-four (24) months old unless significant changes in appearance have occurred necessitating a more recent photograph.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**702. Assessment (II).**

A written assessment of the resident in accordance with Section 101.H shall be conducted by a direct care staff member as evidenced by his or her signature and date within a time-period determined by the facility, but no later than 72 hours after admission.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**703. Individual Care Plan (II).**

A. Using the written assessment, the facility shall develop within seven (7) days of admission an ICP with participation of the resident, administrator (or designee), and/or the sponsor or responsible party when appropriate, as evidenced by their signatures and date. The ICP shall be reviewed and/or revised as changes in resident needs occur, but not less than semi-annually with the resident, administrator (or designee), and/or the sponsor or responsible party as evidenced by their signatures and date.

B. The ICP shall describe:

1. The needs of the resident, including the activities of daily living for which the resident requires assistance, i.e., what assistance, how much, who will provide the assistance, how often, and when;
2. Requirements and arrangements for visits by or to physicians or other authorized healthcare providers;
3. Advance directives/healthcare power of attorney, as applicable;
4. Recreational and social activities which are suitable, desirable, and important to the well-being of the resident;
5. Nutritional needs.

C. The ICP shall delineate the responsibilities of the sponsor and of the facility in meeting the needs of the resident, including provisions for the sponsor to monitor the care and the effectiveness of the facility in meeting those needs. Included shall be specific goal-related objectives based on the needs of the resident as identified during the assessment phase, including adjunct support service needs, other special needs, and the methods for achieving objectives and meeting needs in measurable terms with expected achievement dates.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **704. Record Maintenance.**

A. The licensee shall provide accommodations, space, supplies, and equipment adequate for the protection and storage of resident records.

B. When a resident is transferred from one facility to another, a transfer summary to include at a minimum, copies of the most recent physical examination, the two-step tuberculosis test, the ICP and medication administration record (MAR), shall be forwarded to the receiving facility at the time of transfer or immediately after the transfer if the transfer is of an emergency nature. The transfer summary shall include the date sent and the signature of the transferring facility staff member. (I)

C. The resident record is confidential and shall be made available only to individuals authorized by the facility and/or the S.C. Code of Laws. (II)

D. Records generated by organizations/individuals contracted by the facility for care/services shall be maintained by the facility that has admitted the resident.

E. The facility shall determine the medium in which information is stored.

F. Upon discharge of a resident, the record shall be completed within 30 days, and filed in an inactive/closed file maintained by the licensee. Prior to the closing of a facility for any reason, the licensee shall arrange for preservation of records to ensure compliance with these regulations. The licensee shall notify the Department, in writing, describing these arrangements and the location of the records.

G. Records of residents shall be maintained for at least six (6) years following the discharge of the resident. Other regulation-required documents, e.g., fire drills, activity schedules, etc., shall be retained at least 12 months or since the last Department general inspection, whichever is the longer period.

H. Records of current residents are the property of the facility and shall be maintained at the facility and shall not be removed without court order.

**EXCEPTION:** When a resident moves from one licensed facility to another within the same provider network (same licensee), the original record may follow the resident; the sending facility shall maintain documentation of the resident's transfer/discharge date and identification information. In the event of change of ownership, all active resident records or copies of active resident records shall be transferred to the new owner(s).

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### SECTION 800

#### ADMISSION/RETENTION

#### **801. General (I).**

A. Individuals seeking admission shall be identified as appropriate for the level of care, services, or assistance offered. The facility shall establish admission criteria that are consistently applied and comply with local, State, and Federal laws and regulations.

B. The facility shall admit and retain only those persons appropriate for placement in a CRCF in compliance with the standards of this regulation.

C. The facility shall not admit or retain any of the following persons in compliance with the standards of this regulation:

1. Any person who is likely to endanger him/herself or others as determined by a physician or other authorized healthcare provider;
2. Any person other than an adult; (II)
3. Any person needing hospitalization or nursing home care;
4. Any person needing daily skilled monitoring/observation due to an unstable or complex medical condition, *e.g.*, brittle diabetes, dialysis patients with complications such as infections in the blood;
5. Any person needing medications that require frequent dosage adjustment, regulation and/or monitoring, *e.g.* diabetics receiving sliding scale insulin;
6. Any person needing intravenous medications or fluids, regular intra-muscular and subcutaneous injections by staff or by responsible party. This does not include injections administered on a part-time or intermittent basis by non-staff licensed nurses. Routine injection(s) of insulin scheduled daily or less frequently are permitted;
7. Any person needing care of urinary catheter that cannot be managed independently by the resident;
8. Any person needing treatment of stage 2, 3 or 4 decubitus ulcers, or multiple pressure sores or other widespread skin disorder (important considerations include: signs of infection, full thickness tissue loss, or requirement of sterile technique);
9. Any person needing nasogastric tube feeding or having to be fed by a syringe or straw due to difficulties in swallowing. Gastronomy tube feedings that cannot be managed independently by the resident;
10. Any person needing suctioning of the nose and/or mouth;
11. Any person needing tracheostomy or sterile care of the tracheostomy that cannot be managed independently by the resident; or
12. Any person receiving oxygen for the first time, which requires adjustment and evaluation of oxygen concentration.

D. The facility shall not retain any of the following persons in compliance with the standards of this regulation:

1. Any person who has a serious aggressive, violent or socially inappropriate behavioral symptoms which cannot be controlled or improved in the facility.
2. Any person who has a dependency in all activities of daily living for more than fourteen (14) consecutive days, *e.g.*, bedridden; incapable of locomotion; unable to transfer; totally incontinent of urinary and/or bowel function; must be totally bathed and dressed and toileted and needs extensive assistance to eat. The facility shall develop a plan for transfer on the fifteenth (15<sup>th</sup>) day of total dependency if the resident is not improving.
3. Any person needing the continuous daily attention of a licensed nurse, *e.g.* care of a urinary catheter that cannot be managed independently, treatment of stage 2, 3, or 4 decubitus ulcers. Nursing care may be furnished to residents in need of short-term intermittent nursing care (no more than fourteen (14) consecutive days) while convalescing from illness or injury, provided the nursing services, *e.g.*, the utilization of a home health nurse for sterile dressing changes or for observation related to a surgical site, are furnished by a licensed nurse facility staff member or a home health nurse.

E. Residents whose condition changes to a degree that nursing home care, the daily attention of a nurse, or hospitalization may be required, or have a contagious disease, shall be examined by a physician or other authorized healthcare provider regarding the possible necessity for transfer to a facility where the resident's eligibility for admission is appropriate.

F. When the provision of care/services in the facility, combined with other appropriately licensed services, in accordance with facility policy, *e.g.*, hospice, home health, as may be ordered by a physician

or other authorized healthcare provider, does not meet the needs of the resident, or if any resident becomes in need of continuous medical or nursing supervision, or if the facility does not have the capability to provide necessary care/services, the resident shall be transferred within 30 days to a location which shall meet those needs. The administrator shall coordinate this transfer with the resident, next-of-kin/responsible party, and sponsor.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## SECTION 900

### RESIDENT CARE/SERVICES

#### **901. General.**

A. Prior to admission, there shall be a written agreement between the resident, and/or his/her responsible party, and the facility. The agreement shall be revised upon any changes and shall include at least the following:

1. An explanation of the specific care, services, and/or equipment provided by the facility, e.g., administration of medication, provision of special diet as necessary, assistance with bathing, toileting, feeding, dressing, and mobility;
2. Disclosure of fees for all care, services, and/or equipment provided;
3. Advance notice requirements of not less than thirty (30) days to change fee amount for care, services and/or equipment;
4. Refund policy to include when monies are to be forwarded to resident upon discharge/transfer/relocation;
5. The date a resident is to receive his/her personal needs allowance;
6. The amount a resident receives for his/her personal needs allowance;
7. Transportation policy;
8. Discharge/transfer provisions to include the conditions under which the resident may be discharged and the agreement terminated, and the disposition of personal belongings;
9. Documentation of the explanation of the Resident's Bill of Rights and the grievance procedure. (II)

B. The facility shall coordinate with residents to provide care, including diet, services, i.e., routine and emergency medical care, podiatry care, dental care, counseling and medications, as ordered by a physician or other authorized healthcare provider. Such care shall be provided and coordinated among those responsible during the process of providing such care/services and modified as warranted based upon any changing needs of the resident. Such care and services shall be detailed in the ICP. (I)

C. The facility shall render care and services in accordance with orders from physicians or other authorized healthcare providers and take precautions for residents with special conditions, e.g., pacemakers, wheelchairs, dementia, etc. The facility shall assist in activities of daily living as needed and appropriate. Each facility is required to provide only those activities of daily living and only to the levels specifically designated in the written agreement between the resident, and/or his/her responsible party/guardian, and the facility. (I)

D. The facility shall provide necessary items and assistance, if needed, for residents to maintain their personal cleanliness, e.g., soap. (II)

E. The provision of care/services to residents shall be guided by the recognition of and respect for cultural differences to assure reasonable accommodations shall be made for residents with regard to differences, such as, but not limited to, religious practice and dietary preferences.

F. The facility shall make opportunities for participation in religious services available. Reasonable assistance in obtaining pastoral counseling shall be provided by the facility upon request by the resident.

G. In the event of closure of a facility for any reason, the facility shall ensure continuity of care/services by promptly notifying the resident's attending physician or other authorized healthcare

provider, and responsible party, and arranging for referral to other facilities at the direction of the physician or other authorized healthcare provider. (II)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **902. Fiscal Management (II).**

A. Provisions shall be made for safeguarding money and valuables for those residents who request this assistance.

B. Residents shall manage their own funds whenever possible.

C. Only residents may endorse checks made payable to them, unless a legally constituted authority has been authorized to endorse their checks.

D. In situations where a resident becomes unable to manage his/her funds, the administrator shall contact a family member or the county probate court regarding the need for a court-appointed guardian or conservator. The licensee, administrator, sponsor, or any of their relatives shall not be appointed guardian or conservator.

E. Upon written request of the resident, the administrator may maintain the personal monies for the resident.

F. The licensee may be designated payee for a resident.

G. There shall be an accurate accounting of residents' personal monies and written evidence of purchases by the facility on behalf of the residents to include a record of items/services purchased, written authorization from residents of each item/service purchased, and an accounting of all monies paid to the facility for care and services. Personal monies include all monies, including family donations. No personal monies shall be given to anyone, including family members, without written consent of the resident. If a resident's money is given to anyone by the facility, a receipt shall be obtained.

H. A report of the balance of resident finances shall be physically provided to each resident by the facility on a quarterly basis in accordance with the Resident's Bill of Rights, regardless of the balance amount, *e.g.*, zero balance. Documentation of quarterly reports to residents shall be readily available for review.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **903. Recreation.**

A. The facility shall offer a variety of recreational programs to suit the interests and physical/cognitive capabilities of the residents that choose to participate. The facility shall provide recreational activities that provide stimulation; promote or enhance physical, mental, and/or emotional health; are age-appropriate; and are based on input from the residents and/or responsible party, as well as information obtained in the initial assessment.

B. There shall be at least one different structured recreational activity provided daily each week that shall accommodate residents' needs/interests/capabilities as indicated in the ICP's.

C. The facility shall designate a staff member responsible for the development of the recreational program, to include responsibility for obtaining and maintaining recreational supplies. At least one staff person shall be responsible for providing/coordinating recreational activities for the residents.

D. The recreational supplies shall be adequate and shall be sufficient to accomplish the activities planned.

E. A current month's schedule shall be posted in order for residents to be made aware of activities offered. This schedule shall include activities, dates, times, and locations. Residents may choose activities and schedules consistent with their interests and physical, mental, and psychosocial well-being. If a resident has dementia and is unable to choose for him/herself, staff members/volunteers shall encourage participation and assist when deemed necessary.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **904. Transportation (I).**

The facility shall secure or provide transportation for residents when a physician's services are needed. Local (as defined by the facility) transportation for medical reasons shall be provided by the facility at no additional charge to the resident. If a physician's services are not immediately available and the resident's condition requires immediate medical attention, the facility shall provide or secure transportation for the resident to the appropriate health care providers such as, but not limited to, physicians, dentists, physical therapists, or for treatment at renal dialysis facilities.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **905. Safety Precautions/Restraints (I).**

A. Periodic or continuous mechanical, physical or chemical restraints during routine care of a resident shall not be used, nor shall residents be restrained for staff convenience or as a substitute for care/services. However, in cases of extreme emergencies when a resident is a danger to him/herself or others, mechanical and/or physical restraints may be used as ordered by a physician or other authorized healthcare provider, and until appropriate medical care can be secured.

**EXCEPTION:** Antipsychotic medication administered to residents with Alzheimer's disease or dementia is not considered a chemical restraint if the resident has been prescribed the antipsychotic medication in a physician order and/or PRN and the resident only receives the prescribed dosage of medication as indicated on the physician order and/or PRN and every medication administration is recorded pursuant to the requirements of this regulation.

B. Only those devices specifically designed as restraints may be used. Makeshift restraints shall not be used under any circumstance.

C. Emergency restraint orders shall specify the reason for the use of the restraint, the type of restraint to be used, the maximum time the restraint may be used, and instructions for observing the resident while restrained, if different from the facility's written procedures. Residents certified by a physician or other authorized healthcare provider as requiring restraint for more than 24 hours shall be transferred to an appropriate facility.

D. During emergency restraint, residents shall be monitored at least every 15 minutes, and provided with an opportunity for motion and exercise at least every 30 minutes. Prescribed medications and treatments shall be administered as ordered, and residents shall be offered nourishment and fluids and given bathroom privileges.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **906. Discharge/Transfer.**

A. Residents shall be transferred or discharged only as appropriate per the provisions of the Resident's Bill of Rights. In cases of medical emergencies, immediate transfer is permissible; however, the family member, and the sponsor, if any, shall be notified at the earliest practical hour, but not later than 24 hours following the transfer. (II)

B. Prior to discharge, the resident, his/her appropriate family member, and the sponsor, if any, shall be consulted.

C. Residents shall be transferred or discharged to a location appropriate to the residents needs and abilities. Residents requiring care and/or supervision shall not be transferred/discharged to a location that is not licensed to provide that care. (II)

D. Upon transfer/discharge of a resident, resident information shall be released in a manner that promotes continuity in the care that serves the best interest of the resident.

E. Upon transfer/discharge, the facility shall ensure that medications, as appropriate, personal possessions and funds are released to the resident and/or the receiving facility in a manner that ensures continuity of care/services and maximum convenience of the resident. (II)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1000

### RIGHTS AND ASSURANCES

#### **1001. General (II).**

A. The facility shall comply with all current Federal, State, and local laws and regulations concerning resident care, resident rights and protections, and privacy and disclosure requirements, e.g., 1976 Section 44–81–10, *et seq.*, Resident’s Bill of Rights, Alzheimer’s Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, 1976 Code Section 43–35–5, *et seq.* (I)

B. The Resident’s Bill of Rights, the Omnibus Adult Protection Act, and other notices as required by law, shall be prominently displayed in public areas of the facility.

C. The facility shall comply with all relevant Federal, State, and local laws and regulations concerning discrimination, e.g., Title VII, Section 601 of the Civil Rights Act of 1964, and insure that there is no discrimination with regard to source of payment in the recruitment, location of resident, acceptance or provision of goods and services to residents or potential residents, provided that payment offered is not less than the cost of providing services.

D. Achieving the highest level of self-care and independence by residents shall be reflected in the manner in which the facility provides/promotes resident care, e.g., residents making their own decisions, selecting a physician or other provider, maintaining personal property, managing finances.

E. Should a facility develop “house rules,” the rules shall not be in conflict with the provisions of the Resident’s Bill of Rights or other rights/assurances addressed in this regulation.

F. Residents shall be provided the opportunity to provide input into changes in facility operational policies, procedures, services, including “house rules.”

G. Residents shall be assured freedom of movement. Residents shall not be locked in or out of their rooms or any common usage areas (e.g., dining, sitting, activity rooms) in the facility, or in or out of the facility building. Exit doors may be equipped with delayed egress locks as permitted by the codes referenced in Section 1902.A. (I)

**EXCEPTION:** Exit doors may be locked with written approval by the Department and as permitted by the codes referenced in Section 1902.

H. The facility shall develop a grievance/complaint procedure to be exercised on behalf of the residents to enforce the Resident’s Bill of Rights which includes the address and phone number of the Department, and a provision prohibiting retaliation should the grievance right be exercised.

I. Care, services, and items provided by the facility, the charges, and those services that are the responsibilities of the resident shall be delineated in writing. The resident shall be made aware of such charges/services and changes to charges/services as verified by the signature of the resident or responsible party.

J. Residents shall not be requested or required to perform any type of care/service in the facility that would normally be the duty of a staff member/volunteer. Residents may be allowed to engage in such activities as listed in the ICP with written authorization not necessarily in the ICP from a physician or other authorized healthcare provider, if strictly voluntary, and under proper supervision. (I)

K. Residents shall be allowed sufficient time to attempt and complete activities of daily living tasks without unnecessary intervening by staff members/volunteers in order to expedite completion of the tasks. Staff members/volunteers shall intervene appropriately as necessary to assist residents whose completion of the tasks may be impeded by their physical/mental condition.

L. Residents shall be permitted to use the telephone and shall be allowed privacy when placing or receiving telephone calls. This access shall include business hours from 7 a.m. through 8 p.m., seven (7) days a week, and other times when appropriate. This telephone service shall be available for use by residents and/or visitors for their private, discretionary use; pay phones for this purpose are acceptable. Telephones capable of only local calls are acceptable for this purpose, provided other arrangements exist to provide resident/visitor discretionary access to a telephone capable of long distance service.

M. In instances when a resident moves/relocates, lack of advance notice by the resident of the departure shall not relieve the facility of the obligation to refund the monies due the resident. The

facility may charge the resident no more than fourteen (14) days of occupancy, if the resident fails to notify in writing the administrator of the intent to voluntarily relocate. However, if the facility is able to fill the bed vacated by the resident, the facility shall cease charging the resident regardless of the notice given. The facility shall notify the previous resident in writing as soon as it fills the bed with a new resident. This does not apply to residents that participate in the Optional State Supplementation Program (OSS). Voluntary relocation does not occur when a resident of a CRCF seeks to be discharged because a higher level of care is required or because the resident's health, safety, or welfare is endangered.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## SECTION 1100

### RESIDENT PHYSICAL EXAMINATION AND TB SCREENING

#### **1101. General (I).**

A. A physical examination shall be completed for residents within thirty (30) days prior to admission and at least annually thereafter. Physical examinations conducted within thirty (30) days prior to admission by physicians licensed in states other than South Carolina are permitted for new admissions under the condition that residents obtain an attending physician licensed in South Carolina within thirty (30) days of admission to the facility and undergo a second (2<sup>nd</sup>) physical examination by that physician within thirty (30) days of admission to the facility. The physical examination shall be updated to include new medical information if the resident's condition has changed since the last physical examination was completed. The physical examination shall address:

1. The appropriateness of placement in a CRCF;
2. Medications/treatments ordered;
3. Self-administration status;
4. Identification of special conditions/care required, *e.g.*, a communicable disease, dental problems, podiatric problems, Alzheimer's disease and/or related dementia, *etc.*; and,
5. The need of (or lack thereof) for the continuous daily attention of a licensed nurse.

B. The admission physical examination shall include a two-step tuberculin skin test, as described in Section 1702, unless there is a documented previous positive reaction.

C. The physical examination shall be performed only by a physician or other authorized healthcare provider.

D. If a resident or potential resident has a communicable disease, the administrator shall seek advice from a physician or other authorized healthcare provider in order to:

1. Ensure the facility has the capability to provide adequate care and prevent the spread of that condition, and that the staff members/volunteers are adequately trained;
2. Transfer the resident to an appropriate facility, if necessary.

E. A discharge summary from a health care facility, which includes a physical examination, may be acceptable as the admission physical examination, provided the summary includes the requirements of Sections 1101.A-C above.

F. Isolation Provisions. Residents with contagious pulmonary tuberculosis shall be separated (See Section 1702.E) from all other noninfected residents until declared noncontagious by a physician or other authorized healthcare provider. Should it be determined that the facility cannot care for the resident to the degree which assures the health and safety of the resident and the other residents of the facility, the resident shall be relocated to a facility that can meet his/her needs.

G. In the event that a resident transfers from a facility licensed by the Department to a CRCF, an additional admission physical examination shall not be required, provided the sending facility has had a physical examination conducted on the resident not earlier than twelve (12) months prior to the admission of the resident to the CRCF, and the physical examination meets requirements specified in Sections 1101.A - C above unless the receiving facility has an indication that the health status of the resident has changed significantly. A tuberculin skin test and/or BAMT shall be required within one (1)

month after admission to the CRCF to which the resident transfers, to document baseline status for that facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1200

### MEDICATION MANAGEMENT

#### **1201. General (I).**

A. Medications, including controlled substances, medical supplies, and those items necessary for the rendering of first aid shall be available and properly managed in accordance with local, State, and Federal laws and regulations. Such management shall address the securing, storing, and administering of medications, medical supplies, first aid supplies, and biologicals, their disposal when discontinued or outdated, and their disposition at discharge, death, or transfer of a resident.

B. Applicable reference materials published within the previous three years shall be available at the facility in order to provide staff members/volunteers with adequate information concerning medications.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1202. Medication and Treatment Orders (I).**

A. Medications and treatments, to include oxygen, shall be administered to residents only upon orders (to include standing orders) of a physician or other authorized healthcare provider. Medications accompanying residents at admission may be administered to residents provided the medication is in the original labeled container and the order is subsequently obtained as a part of the admission physical examination. Should there be concerns regarding the appropriateness of administering medications due to the condition/state of the medication, *e.g.*, expired, makeshift or illegible labels, or the condition/state of health of the newly-admitted resident, staff members shall consult with or make arrangements to have the resident examined by a physician or other authorized healthcare provider, or at the local hospital emergency room prior to administering any medications.

B. All orders (including verbal orders) shall be received only by staff members authorized by the facility, and shall be signed and dated by a physician or other authorized healthcare provider no later than three (3) business days after the order is given.

C. Medications and medical supplies ordered for a specific resident shall not be provided/administered to any other resident.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1203. Administering Medication/Treatments (I).**

A. Doses of medication shall be administered by the same staff member who prepared them for administration. Preparation shall occur no earlier than one hour prior to administering. Preparation of doses for more than one scheduled administration shall not be permitted. Each physician ordered treatment or medication dose administered/supervised shall be properly recorded by initialing on the resident's medication administration record (MAR) as the medication is administered or treatment record as treatment is rendered. Recording medication administration shall include medication name, dosage, mode of administration, date, time, and the signature of the individual administering or supervising the taking of the medication. If the ordered dosage is to be given on a varying schedule, *e.g.*, "take two tablets the first day and one tablet every other day by mouth with noon meal," the number of tablets shall also be recorded. The treatment record shall document the type of treatment, date and time of treatment and signature of the individual administering treatment.

B. Facility staff members may administer routine medications, acting in a surrogate family role, provided these staff members have been trained to perform these tasks in the proper manner by individuals licensed to administer medications. Facility staff members may administer injections of medications only in instances where medications are required for diabetes and conditions associated with anaphylactic reactions under established medical protocol. A staff licensed nurse may administer influenza and vitamin B-12 injections and perform tuberculin skin tests. Although facility staff members may monitor blood sugar levels (provided s/he has been appropriately trained and the facility

has received a "Certificate of Waiver" from Clinical Laboratories Improvement Amendments (CLIA)), the provision of sliding scale insulin injections by facility staff members is prohibited.

C. Self-administering of medications by a resident is permitted only:

1. Upon the specific written orders of the physician or other authorized healthcare provider, obtained on a semi-annual basis, or

2. The facility shall ascertain by resident demonstration to the staff and document, at least quarterly, that s/he remains capable of self-administering medications.

D. Facilities may elect not to permit self-administration.

E. When residents who are unable to self-administer medications leave the facility for an extended period of time, the proper amount of medications, along with dosage, mode, date, and time of administration, shall be given to a responsible person who will be in charge of the resident during his/her absence from the facility; these details shall be properly documented in the MAR. In these instances, the amount of medication needed for the designated period of time may be transferred to a prescription vial or bottle that is properly labeled.

F. At each shift change, there shall be a documented review of the MAR's by outgoing staff members with incoming staff members that shall include verification by outgoing staff members that they have properly administered medications in accordance with orders by a physician or other authorized healthcare provider, and have documented the administrations. Errors/omissions indicated on the MAR's shall be addressed and corrective action taken at that time.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

#### **1204. Pharmacy Services (I).**

A. Any pharmacy within the facility shall be provided by or under the direction of a pharmacist in accordance with accepted professional principles and appropriate local, State, and Federal laws and regulations.

B. Facilities which maintain stocks of legend drugs and biologicals for dispensing to residents shall obtain and maintain a valid, current pharmacy permit from the S.C. Board of Pharmacy.

C. Labeling of medications dispensed to residents shall be in compliance with local, State, and Federal laws and regulations, to include expiration date.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

#### **1205. Medication Containers (I).**

A. Medications for residents shall be obtained from a permitted pharmacy or prescriber on an individual prescription basis. These medications shall bear a label affixed to the container which reflects at least the following: name of pharmacy, name of resident, name of the prescribing physician or other authorized healthcare provider, date and prescription number, directions for use, and the name and dosage unit of the medication. The label shall be brought into accord with the directions of the physician or other authorized healthcare provider each time the prescription is refilled. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the pharmacy for re-labeling or disposal. Residents may obtain their over-the-counter (OTC) medication from a pharmacy other than a pharmacy contracted with the facility.

B. Medications for each resident shall be kept in the original container(s) including unit dose systems; there shall be no transferring between containers (except in instances such as in Section 1203.E above), or opening blister packs to remove medications for destruction or adding new medications for administration, except under the direction of a pharmacist. In addition, for those facilities that utilize the unit dose system or multi-dose system, an on-site review of the medication program by a pharmacist shall be conducted on at least a quarterly basis to ensure the program has been properly implemented and maintained. For changes in dosage, the new packaging shall be available in the facility no later than the next administration time subsequent to the order.

C. If a physician or other authorized healthcare provider changes the dosage of a medication, a label, which does not obscure the original label, shall be attached to the container which indicates the new dosage, date, and prescriber's name. In lieu of this procedure, it is acceptable to attach a label to the container that states, "Directions changed; refer to MAR and physician or other authorized

healthcare provider orders for current administration instructions.” The new directions shall be communicated to the pharmacist upon receipt of the order.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **1206. Medication Storage (I).**

A. Medications shall be properly stored and safeguarded to prevent access by unauthorized persons. Expired or discontinued medications shall not be stored with current medications. Storage areas shall be locked, and of sufficient size for clean and orderly storage. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf life. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U.S. Pharmacopeia (36–46 degrees F.). Medications requiring refrigeration shall be kept in a secured refrigerator used exclusively for medications, or in a secured manner in which medications are separated from other items kept in a refrigerator (e.g. Lock Box). All refrigerators storing medications shall have accurate thermometers (within plus or minus 2 degrees).

B. Medications shall be stored:

1. Separately from poisonous substances or body fluids;

2. In a manner which provides for separation between topical and oral medications, and which provides for separation of each individual resident’s medication.

C. A facility shall maintain records of receipt, administration and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation including:

1. Separate control sheets on any controlled substances. This record shall contain the following information: date, time administered, name of resident, dose, signature of individual administering, name of physician or other legally authorized healthcare provider ordering the medication; and

2. At each shift change, a documented review of the control sheets by outgoing staff members with incoming staff members including verification by outgoing staff members indicating they have properly administered medications in accordance with orders by a physician or other authorized healthcare provider, and have documented the administrations. Errors/omissions indicated on the control sheets shall be addressed and corrective action taken at that time.

D. Unless the facility has a permitted pharmacy, legend medications shall not be stored except those specifically prescribed for individual residents. Nonlegend medications that can be obtained without a prescription may be retained and labeled as stock in the facility for administration as ordered by a physician or other authorized healthcare provider.

E. The medications prescribed for a resident shall be protected from use by any other individuals. For those residents who have been authorized by a physician or other authorized healthcare provider to self-administer medications, such medications may be kept on the resident’s person, i.e., a pocketbook, pocket, or any other method that would enable the resident to control the items.

F. No medication shall be left in a resident’s room unless the facility provides an individual cabinet/compartments which is kept locked in the room of each resident who has been authorized in writing to self-administer by a physician or other authorized healthcare provider. In lieu of a locked cabinet/ compartments, storage of medications shall be permitted in a resident room which can be locked, provided the room is licensed for one bed; medications are not accessible by unauthorized persons; the room is kept locked when the resident is not in the room; the medications are not controlled substances and all other requirements of this section are met.

G. During nighttime hours in resident rooms, only medications which a physician or other authorized healthcare provider has ordered in writing for emergency/immediate use, e.g., nitroglycerin or inhalers, may be kept unlocked in or upon a cabinet or bedside table, and only when the resident to whom that medication belongs is present in the room.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **1207. Disposition of Medications (I).**

A. Upon discharge of a resident, the facility shall release unused medications to the resident, family member, or responsible party, as appropriate, and shall document the release with the signature of the

person receiving the unused medications unless specifically prohibited by the attending physician or other authorized healthcare provider.

B. Residents' medications shall be destroyed by the facility administrator or his/her designee when:

1. Medication has deteriorated or exceeded its expiration date;
2. Unused portions remain due to death or discharge of the resident, or discontinuance of the medication (may also be returned to the dispensing pharmacy). Medication that has been discontinued by order may be stored for a period not to exceed thirty (30) days provided they are stored separately from current medications.

C. The destruction of medication shall be witnessed by the administrator or his/her designee, the mode of destruction indicated, and these steps documented. Destruction records shall be retained by the facility for a period of two (2) years.

D. The destruction of controlled substances shall be accomplished only by the administrator or his or her designee and witnessed by the administrator or his or her designee and a staff member trained by individuals licensed to administer medications.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1300

### MEAL SERVICE

#### **1301. General (II).**

A. All facilities that prepare food on-site shall be approved by the Department, and shall be regulated, inspected, and graded pursuant to R.61-25. Facilities preparing food on-site and licensed for 16 beds or more subsequent to the promulgation of these regulations shall have kitchen equipment which meets the requirement of R.61-25. Existing facilities with 16 licensed beds or more may continue to operate with equipment currently in use; however, only certified/classified equipment shall be used when replacements are necessary. Those facilities with 15 beds or less shall be regulated pursuant to R.61-25 with certain exceptions in regard to food equipment (may utilize non-certified/non-classified food equipment).

**EXCEPTION:** In facilities with five beds or less, in lieu of a three-compartment sink, a non-certified/non-classified dishwasher may be used to wash equipment/utensils, provided the facility is equipped with at least a two-compartment sink used to sanitize and adequately air dry equipment/utensils. In facilities with 10 beds or less and licensed prior to May 24, 1991, as CRCF's, in which a two compartment sink serves to wash kitchen equipment/utensils, the facility shall provide an additional container of adequate length, width, and depth to completely immerse all equipment/utensils, for final sanitation. Non-certified/non-classified dishwashers may be utilized in facilities licensed with 10 beds or less prior to May 24, 1991, provided they are approved by the Department.

B. When meals are catered to a facility, such meals shall be obtained from a food service establishment graded by the Department, pursuant to R.61-25, and there shall be a written executed contract with the food service establishment.

C. If food is prepared at a central kitchen and delivered to separate facilities or separate buildings and/or floors of the same facility, provisions shall be made and approved by the Department for proper maintenance of food temperatures and a sanitary mode of transportation.

D. Food shall be palatable, properly prepared, and sufficient in quantity and quality to meet the daily nutritional needs of the residents in accordance with written dietary policies and procedures. Efforts shall be made to accommodate the religious, cultural, and ethnic preferences of each individual resident and consider variations of eating habits, unless the orders of a physician or other authorized healthcare provider contraindicate.

E. Liquid or powder soap dispensers and sanitary paper towels shall be available at each food service handwash lavatory. Alcohol-based waterless hand sanitizers shall not be used in lieu of liquid or powder soap.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1302. Food and Food Storage.**

- A. Home canned food usage shall be prohibited. (I)
- B. At least a one-week supply of staple foods and a two-day supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu and special or therapeutic diets. (II)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1303. Meals and Services.**

- A. All facilities shall provide dietary services to meet the daily nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (I)
- B. The dining area shall provide a congenial and relaxed environment. Table service shall be planned in an attractive and colorful manner for each meal and shall include full place settings with napkins, tablecloths or place-mats, and nondisposable forks, spoons, knives, drink containers, plates, and other eating utensils/containers as needed.
- C. A minimum of three nutritionally-adequate meals, in accordance with Section 1303.A above, in each 24-hour period, shall be provided for each resident unless otherwise directed by the resident's physician or other authorized healthcare provider. Not more than 14 hours shall elapse between the serving of the evening meal and breakfast the following day. (II)
- D. Special attention shall be given to preparation and prompt serving in order to maintain correct food temperatures for serving at the table or resident room (tray service). (II)
- E. The same foods shall not be repetitively served during each seven-day period except to honor specific, individual resident requests.
- F. Specific times for serving meals shall be established, documented on a posted menu, and followed.
- G. Suitable food and snacks shall be available and offered between meals at no additional cost to the residents. (II)
- H. Residents shall be encouraged to eat in the dining room at mealtime. Tray service shall be permitted when the resident is medically unable to access the dining area for meals, or if the facility has received written notice from the resident/responsible party of a preference to receive tray service, in which case it may be provided on an occasional basis unless otherwise indicated in the facility's policies and procedures. Under no circumstances, may staff members utilize tray service for their own convenience. (II)

**HISTORY:** Formerly R. 61–81.1304. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015; State Register Volume 39, Issue No. 7, Doc. No. 4484, eff July 24, 2015 (errata).

#### **Editor's Note**

Former 61–84.1303, titled **Food Equipment and Utensils (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1304. Meal Service Personnel (II).**

- A. Sufficient staff members/volunteers shall be available to serve food and to provide individual attention and assistance, as needed.
- B. Dietary services shall be organized with established lines of accountability and clearly defined job assignments for those engaged in food preparation and serving. There shall be trained staff members/volunteers to supervise the preparation and serving of the proper diet to the residents including having sufficient knowledge of food values in order to make appropriate substitutions when necessary. The facility shall not permit residents to engage in food preparation.

**EXCEPTION:** A resident may engage in food preparation provided the following criteria are met:

1. Approval to engage in food preparation by a physician or other authorized medical authority;
2. The ICP of the resident has indicated food preparation as suitable/beneficial to the resident;
3. The resident is directly supervised by staff members/volunteers (must be in the kitchen with the resident);

4. Preparing food must be part of an organized program in which daily living skills are being taught;

5. The utilization of residents for preparing food is not a substitute for staff members/volunteers.

**HISTORY: Formerly R. 61–84.1305. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **1305. Diets.**

A. If the facility accepts or retains residents in need of medically-prescribed special diets, the menus for such diets shall be planned by a professionally-qualified dietitian or shall be reviewed and approved by a physician or other authorized healthcare provider. The facility shall maintain documentation that each of these menus has been planned by a dietitian, a physician or other authorized healthcare provider. At a minimum, documentation for each resident's special diet menu shall include the signature of the dietitian, the physician or other authorized healthcare provider, his/her title, and the date he/she signed the menu. The facility shall maintain staff capable of the preparation/serving of any special diet, *e.g.*, low-sodium, low-fat, 1200-calorie, diabetic diet. Facility staff preparing a resident's special diet shall be knowledgeable of the procedure to prepare each special diet. The preparation of any resident's special diet shall follow the written guidance provided by a registered dietitian, physician, or other authorized healthcare provider authorizing the resident's special diet. For each resident receiving a special diet, this written guidance shall be documented in the resident's record. (I)

B. If special diets are required, the necessary equipment for preparation of those diets shall be available and utilized.

C. A diet manual published within the previous five years shall be available and shall address at minimum:

1. Food sources and food quality;
2. Food protection storage, preparation and service;
3. Food worker health and cleanliness;
4. Recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences food serving recommendations;
5. General menu planning;
6. Menu planning appropriate to special needs, *e.g.*, diabetic, low-salt, low-cholesterol, or other diets appropriate for the elderly and/or infirmed.

**HISTORY: Formerly R. 61–84.1306. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **1306. Menus.**

A. Menus shall be planned and written at a minimum of one week in advance and dated as served. The current week's menu, including routine and special diets and any substitutions or changes made, shall be readily available and posted in one or more conspicuous places in a public area. All substitutions made on the master menu shall be recorded in writing. Cycled menus shall be rotated so that the same weekly menu is not duplicated for at least a period of three weeks.

B. Records of menus as served shall be maintained for at least 30 days.

**HISTORY: Formerly R. 61–81.1307. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **1307. Ice and Drinking Water (II).**

A. Ice from a water system that is in accordance with R.61–58, shall be available and precautions taken to prevent contamination. The ice scoop shall be stored in a sanitary manner outside of the ice container.

B. Potable drinking water shall be available and accessible to residents at all times.

C. The usage of common cups shall be prohibited.

D. Ice delivered to resident areas in bulk shall be in nonporous, covered containers that shall be cleaned after each use.

**HISTORY:** Formerly R. 61–84.1308. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**1309. Repealed** by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**Editor's Note**

Former R. 61–84.1309 was titled **Equipment (II)**.

**1310. Repealed** by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**Editor's Note**

Former R. 61–84.1310 was titled **Refuse Storage and Disposal (II)**.

SECTION 1400

EMERGENCY PROCEDURES/DISASTER PREPAREDNESS

**1401. Disaster Preparedness (II).**

A. All facilities shall develop, by contact and consultation with their county emergency preparedness agency, a suitable written plan for actions to be taken in the event of a disaster and/or emergency evacuation and implement the written plan for actions at the time of need. Prior to initial licensing of a facility, the completed plan shall be submitted to the Department for review. Additionally, in instances where there are applications for increases in licensed bed capacity, the emergency and disaster evacuation plan shall be updated to reflect the proposed new total licensed bed capacity. All staff members and volunteers shall be made familiar with this plan and instructed as to any required actions. A copy of the emergency and disaster evacuation plan shall be available for inspection by the resident and/or responsible party upon request. The emergency and disaster evacuation plan shall be reviewed and updated annually, as appropriate. Staff members shall rehearse the emergency and disaster evacuation plan at least annually and shall not require resident participation.

B. The disaster/emergency evacuation plan shall include, but not be limited to:

1. A sheltering plan to include:

- a. The licensed bed capacity and average occupancy rate;
- b. Name, address and phone number of the sheltering facility(ies) to which the residents will be relocated during a disaster;
- c. A letter of agreement signed by an authorized representative of each sheltering facility which shall include: the number of relocated residents that can be accommodated; sleeping, feeding, and medication plans for the relocated residents; and provisions for accommodating relocated staff members/volunteers. The letter shall be updated with the sheltering facility at least every three (3) years and whenever significant changes occur. For those facilities located in Beaufort, Charleston, Colleton, Horry, Jasper, and Georgetown counties, at least one (1) sheltering facility shall be located in a county other than these counties.

2. A transportation plan, to include agreements with entities for relocating residents, which addresses:

- a. Number and type of vehicles required;
- b. How and when the vehicles are to be obtained;
- c. Who (by name or organization) will provide drivers;
- d. Procedures for providing appropriate medical support, food, water, and medications during transportation and relocation based on the needs and number of the residents;
- e. Estimated time to accomplish the relocation;
- f. Primary and secondary routes to be taken to the sheltering facility.

3. A staffing plan for the relocated residents, to include:
  - a. How care will be provided to the relocated residents, including the number and type of staff members that will accompany residents who are relocated;
  - b. Prearranged transportation arrangements to ensure staff members are relocated to the sheltering facility;
  - c. Co-signed statement by an authorized representative of the sheltering facility if staffing is to be provided by the sheltering facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1402. Emergency Call Numbers.**

Emergency call data shall be posted in a conspicuous place and shall include at least the telephone numbers of fire and police departments, ambulance service, and the poison control center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of staff members/volunteers to be notified in case of emergency.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1403. Continuity of Essential Services (II).**

There shall be a written plan to be implemented to assure the continuation of essential resident support services for such reasons as power outage, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **SECTION 1500**

#### **FIRE PREVENTION**

#### **1501. Arrangements for Fire Department Response/Protection (I).**

A. Each facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, i.e., fire plan and evacuation plan.

B. Facilities located outside of a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the facility and a copy shall be forwarded to the Department. If the agreement is changed, a copy shall be forwarded to the Department.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1502. Tests and Inspections (I).**

Fire protection and suppression systems shall be maintained and tested in accordance with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to community residential care facilities.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1503. Fire Response Training (I).**

- A. Fire response training shall address at a minimum, the following:
  1. Fire plan, including the training of staff members/volunteers;
  2. Reporting a fire;
  3. Use of the fire alarm system, if applicable;
  4. Location and use of fire-fighting equipment;
  5. Methods of fire containment;
  6. Specific responsibilities, tasks, or duties of each individual.

B. A plan for the evacuation of residents, staff members, and visitors, to include evacuation routes and procedures, in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the facility.

C. All residents capable of assisting in their evacuation shall be trained in the proper actions to take in the event of a fire, *e.g.*, actions to take if the primary escape route is blocked.

D. Residents shall be made familiar with the fire plan and evacuation plan upon admission and a copy of the evacuation floor diagram shall be provided to each resident and/or the resident's responsible party.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1504. Fire Drills (I).**

A. An unannounced fire drill shall be conducted at least quarterly for all shifts. Each staff member/volunteer shall participate in a fire drill at least once each year. Records of drills shall be maintained at the facility, indicating the date, time, shift, description, and evaluation of the drill, and the names of staff members/volunteers and residents directly involved in responding to the drill. If fire drill requirements are mandated by statute or regulation, then provisions of the statute or regulation shall be complied with and shall supersede the provisions of Section 1504.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1503 above.

C. All residents shall participate in fire drills. In instances when a resident refuses to participate in a drill, efforts shall be made to encourage participation, *e.g.*, counseling, implementation of incentives rewarding residents for participation, specific staff/volunteer to resident assignments to promote resident participation. Continued refusal may necessitate implementation of the discharge planning process to place the resident in a setting more appropriate to their needs and abilities.

D. In conducting fire drills, all residents shall evacuate to the outside of the building to a selected assembly point; drills shall be designed to ensure that residents attain the experience of exiting through all exits.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1600

### MAINTENANCE

### **1601. General (II).**

The facility shall keep all equipment and building components (*e.g.*, doors, windows, lighting fixtures, plumbing fixtures) in good repair and operating condition. The facility shall document preventive maintenance. The facility shall comply with the provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to community residential care facilities.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1700

### INFECTION CONTROL AND ENVIRONMENT

### **1701. Staff Practices (I).**

Staff/volunteer practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures/practices shall be in compliance with applicable guidelines of the *Blood borne Pathogens Standard of the Occupational Safety and Health Act (OSHA) of 1970*; the Centers for Disease Control and Prevention (CDC); and R.61-105; and other applicable Federal, State, and local laws and regulations.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1702. Tuberculin Skin Testing (I).**

A. Tuberculin skin testing is a diagnostic tool for detecting *M. tuberculosis* infection. A small dose (0.1 mil) of purified protein derivative (PPD) tuberculin is injected just beneath the surface of the skin

(by the intradermal Mantoux method), and the area is examined for induration (hard, dense, raised area at the site of the TST administration) forty-eight to seventy-two (48 to 72) hours after the injection (but positive reactions can still be measurable up to a week after administering the TST). The size of the indurated area is measured with a millimeter ruler and the reading is recorded in millimeters, including zero (0) mm to represent no induration. Redness/erythema is insignificant and is not measured or recorded. Authorized healthcare providers are permitted to perform tuberculin skin testing and symptom screening.

B. All facilities shall conduct an annual tuberculosis risk assessment (See Section 101.CCC) in accordance with CDC guidelines (See Section 102.B.8) to determine the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

C. The risk classification, *i.e.*, low risk, medium risk, shall be used as part of the risk assessment to determine the need for an ongoing TB screening program for staff/direct care volunteers and residents and the frequency of screening. A risk classification shall be determined for the entire facility. In certain settings, *e.g.*, healthcare organizations that encompass multiple sites or types of services, specific areas defined by geography, functional units, patient population, job type, or location within the setting may have separate risk classifications.

D. Staff/Direct Care Volunteers/Private Sitters Tuberculin Skin Testing

1. Tuberculosis Status. Prior to date of hire or initial resident contact, the tuberculosis status of staff/direct care volunteer/private sitters shall be determined in the following manner in accordance with the applicable risk classification:

2. Low Risk:

a. Baseline two-step Tuberculin Skin Test (TST) or a single Blood Assay for *Mycobacterium tuberculosis* (BAMT): All staff/direct care volunteers/private sitters (within three (3) months prior to contact with residents) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff/direct care volunteer or private sitter has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered and read to serve as the baseline prior to resident contact.

b. Periodic TST or BAMT is not required.

c. Post-exposure TST or a BAMT for staff/direct care volunteers upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8 to 10) weeks after that exposure to *M. tuberculosis* ended.

d. Post-exposure TST or a BAMT for private sitters upon unprotected exposure to *M. tuberculosis*: Written evidence of a contact investigation when unprotected exposure is identified shall be provided to the facility administrator. The private sitter shall provide documentation of a completed single TST or a BAMT prior to resident contact. If the TST or BAMT result is negative, the private sitter shall provide written evidence of an additional TST or BAMT eight to ten (8 to 10) weeks after that exposure to *M. tuberculosis* ended. (CDC: Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, December 30, 2005).

e. Baseline positive with or without documentation of treatment for latent TB infection (LTBI) (See Section 101.BB) or TB disease shall have a symptoms screen prior to employment and annually thereafter.

f. Upon hire, staff/direct care volunteers/private sitters with a newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). Repeat radiographs are not needed unless symptoms or signs of TB disease develop or unless recommended by a physician. These staff members/direct care volunteers/private sitters will be evaluated for the need for treatment of TB disease or latent TB infection (LTBI) and will be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

3. Medium Risk:

a. Baseline two-step TST or a single BAMT: All staff/direct care volunteers/private sitters (within three (3) months prior to contact with residents) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff/direct care volunteer/private sitter has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline prior to resident contact.

b. Periodic testing (with TST or BAMT): Annually, of all staff/direct care volunteers who have risk of TB exposure and who have previous documented negative results. Instead of participating in periodic testing, staff/direct care volunteers with documented TB infection (positive TST or BAMT) shall receive a symptom screen annually. This screen shall be accomplished by educating the staff/direct care volunteers who have documented TB infection about symptoms of TB disease (including the staff's and/or direct care volunteers' responses concerning symptoms of TB disease), documenting the questioning of the staff/direct care volunteers about the presence of symptoms of TB disease, and instructing the staff/direct care volunteers to report any such symptoms immediately to the administrator. Treatment for latent TB infection (LTBI) shall be considered in accordance with CDC and Department guidelines and, if recommended, treatment completion shall be encouraged.

c. Periodic testing (with TST or BAMT): Annually, of all private sitters who have risk of TB exposure and who have previous documented negative results. Instead of participating in periodic testing, private sitters with documented TB infection (positive TST or BAMT) shall provide the facility with written evidence of a symptom screen annually. Documentation of education about symptoms of TB disease (including responses concerning symptoms of TB disease) and written evidence of the questioning about the presence of symptoms of TB disease, and the report of any such symptoms shall be provided immediately to the facility administrator.

d. Post-exposure TST or a BAMT for staff/direct care volunteers upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation (See Section 101.M) when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff/direct care volunteers/private sitters who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or BAMT eight to ten (8 to 10) weeks after that exposure to *M. tuberculosis* ended.

e. Post exposure TST or a BAMT for private sitters upon unprotected exposure to *M. tuberculosis*: Written evidence of a contact investigation when unprotected exposure is identified shall be provided to the facility administrator. The private sitter shall provide documentation of a completed single TST or a BAMT prior to resident contact. If the TST or BAMT result is negative, the private sitter shall provide written evidence of an additional TST or BAMT eight to ten (8 to 10) weeks after that exposure to *M. tuberculosis* ended.

#### 4. Baseline Positive or Newly Positive Test Result:

a. Baseline positive with or without documentation of treatment for latent TB infection (LTBI) or TB disease shall have a symptoms screen prior to employment and annually thereafter.

b. Upon hire, staff/direct care volunteers/private sitters with a newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). Repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician. These staff members/direct care volunteers/private sitters will be evaluated for the need for treatment of TB disease or latent TB infection (LTBI) and will be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

c. Staff/direct care volunteers/private sitters who are known or suspected to have TB disease shall be excluded from work, required to undergo evaluation by a physician, and permitted to return to work only with written approval by the Department's TB Control program. Repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician.

#### E. Resident Tuberculosis Screening (I)

1. Tuberculosis Status. Prior to admission, the tuberculosis status of a resident shall be determined in the following manner in accordance with the applicable risk classification:

a. For Low Risk and Medium Risk:

1. Admission/Baseline two-step TST or a single BAMT: All residents within thirty (30) days prior to admission shall have completed the first step of the two step tuberculin skin test followed seven to twenty one (7 to 21) days later by a second test unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly-admitted resident has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered within one (1) month prior to admission to the facility to serve as the baseline. As an exception, a resident may be admitted with at least the first step of the TB screening process completed prior to admission and the second step within fourteen (14) days of admission.

2. Periodic TST or BAMT is not required.

3. Post-exposure TST or a BAMT for residents upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all residents who have had exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8 to 10) weeks after that exposure to *M. tuberculosis* ended.

b. Baseline Positive or Newly Positive Test Result:

1. Residents with a baseline positive or newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or documentation of treatment for latent TB infection (LTBI) or TB disease or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). Routine repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician. These residents shall be evaluated for the need for treatment. If diagnosed with latent TB infection (LTBI) the resident shall be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program). For those residents diagnosed with TB disease, the facility shall assure that the affected residents follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

2. Residents who are known or suspected to have TB disease shall be transferred from the facility if the facility does not have an Airborne Infection Isolation room (See Section 101.E), required to undergo evaluation by a physician, and permitted to return to the facility only with written approval by the Department's TB Control program.

F. Individuals who have been declared in writing to be in an emergency crisis stabilization status may be admitted to the facility without the initial step of the two-step tuberculin skin test and/or while awaiting the result of a BAMT. These individuals shall be placed in an area separate from the general population. This admission to the facility may be made provided:

1. There is documentation at the facility of the declaration by Adult Protective Services of the South Carolina Department of Social Services or the South Carolina Department of Mental Health that the admission is, in fact, an emergency (NOTE: Only these agencies may declare these crisis stabilization admissions to be an emergency);

2. There is written evidence of a chest x-ray within one (1) month prior to admission and a written assessment by a physician or other authorized healthcare provider that there is no active TB and a negative assessment for signs and/or symptoms of tuberculosis; and,

3. The resident will receive the initial step of the two-step tuberculin test within twenty-four (24) hours of admission to the facility. The second step of the two-step tuberculin skin test must be administered within the next seven to fourteen (7 to 14) days.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015; State Register Volume 39, Issue No. 9, Doc. No. 4484, eff September 25, 2015 (errata).

## **1703. Housekeeping (II).**

The facility and its grounds shall be clean, and free of vermin and offensive odors.

A. Interior housekeeping shall at a minimum include:

1. Cleaning each specific area of the facility;
2. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area appropriate to the area and the equipment's purpose or use;
3. Safe storage of chemicals indicated as harmful on the product label, cleaning materials, and supplies in cabinets or well-lighted closets/rooms, inaccessible to residents. If a physician or other authorized healthcare provider has determined that a resident is capable of appropriately using a cleaning product or other hazardous agent, the facility may elect to permit the resident to use the product, provided there is a written statement from a physician or other authorized healthcare provider that assures that the resident is capable of maintaining the product in a secure locked manner and that a description of product usage is outlined in the resident's ICP.

B. Exterior housekeeping shall at a minimum include:

1. Cleaning of all exterior areas, e.g., porches and ramps, and removal of safety impediments such as snow and ice;
2. Keeping facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.
3. Safe storage of chemicals indicated as harmful on the product label, equipment and supplies inaccessible to residents.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1704. Infectious Waste (I).**

Accumulated waste, including all contaminated sharps, dressings, and/or similar infectious waste, shall be disposed of in a manner compliant with *OSHA Blood-borne Pathogens Standard*, and R.61–105.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1705. Pets (II).**

A. If the facility chooses to permit pets, healthy animals that are free of fleas, ticks, and intestinal parasites and have been screened by a veterinarian prior to resident contact, have received required inoculations, if applicable, and that present no apparent threat to the health, safety, and well-being of the residents, may be permitted in the facility, provided they are sufficiently fed and cared for and that both the pets and their housing are kept clean.

B. Pets shall not be allowed near residents who have allergic sensitivities to pets, or for other reasons such as residents who do not wish to have pets near them.

C. Pets shall not be allowed in the kitchen area. Pets shall be permitted in resident dining areas only during times when food is not being served. If the dining area is adjacent to a food preparation or storage area, those areas shall be effectively separated by walls and closed doors while pets are present.

D. If personal pets are permitted in the facility, the housing of those pets shall be either in a resident private room or outside the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1706. Clean/Soiled Linen and Clothing (II).**

A. Clean Linen/Clothing. A supply of clean, sanitary linen/clothing shall be available at all times. In order to prevent the contamination of clean linen/clothing by dust or other airborne particles or organisms, clean linen/clothing shall be stored and transported in a sanitary manner, e.g., enclosed and covered. Linen/Clothing storage rooms shall be used only for the storage of linen/clothing. Clean linen/Clothing shall be separated from storage of other purposes.

B. Soiled Linen/Clothing.

1. Soiled linen/Clothing shall neither be sorted, rinsed, nor washed outside of the laundry service area;
2. Provisions shall be made for collecting, transporting, and storing soiled linen/clothing;
3. Soiled linen/Clothing shall be kept in enclosed/covered containers;

4. Laundry operations shall not be conducted in resident rooms, dining rooms, or in locations where food is prepared, served, or stored. Freezers/refrigerators may be stored in laundry areas, provided sanitary conditions are maintained.

**EXCEPTION:** Residents may sort, rinse/handwash their own soiled, delicate, personal items, e.g., pantyhose, underwear, socks, handkerchiefs, clothing, accessories, heirloom linens, needlepoint, crocheted, or knitted pillows or pillowcases, or other similar items personally owned and cared for by the resident, in a private bathroom sink, provided the practice does not create a safety hazard, e.g., water on the floor.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1800

### QUALITY IMPROVEMENT PROGRAM

#### **1801. General (II).**

A. There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care/services provided by the facility.

B. The quality improvement program, as a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is regularly, systematically, and objectively accomplished;
2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;
3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;
4. Analyze the appropriateness of ICP's and the necessity of care/services rendered;
5. Analyze all incidents and accidents, to include all medication errors and resident deaths;
6. Analyze any infection, epidemic outbreaks, or other unusual occurrences which threaten the health, safety, or well-being of the residents;
7. Establish a systematic method of obtaining feedback from residents and other interested persons, e.g., family members and peer organizations, as expressed by the level of satisfaction with care/services received.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 1900

### DESIGN AND CONSTRUCTION

#### **1901. General (II).**

A facility shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each resident. Facility design shall be such that all residents have access to required services. There shall be at least 200 gross square feet per licensed bed in facilities with ten (10) beds or less, and in facilities licensed for more than 10 beds, at least an additional 100 gross square feet per licensed bed.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **1902. Codes and Standards (II)**

A. Facility design and construction shall comply with provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to community residential care facilities.

B. Unless specifically required otherwise by the Department, all facilities shall comply with the construction codes and construction regulations applicable at the time its license was issued.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

### **1903. Submission of Plans (II)**

A. Plans and specifications shall be submitted to the Department for review and approval for new construction, additions or alterations to existing buildings, replacement of major equipment, buildings being licensed for the first time, buildings changing license type, and for facilities increasing occupant load or licensed capacity. Final plans and specifications shall be prepared by an architect and/or engineer registered in South Carolina and shall bear their seals and signatures. Architectural plans shall also bear the seal of a South Carolina registered architectural corporation. Unless directed otherwise by the Department, submit plans at the schematic, design development, and final stages. All plans shall be drawn to scale with the title, stage of submission and date shown thereon. Any construction changes from the approved documents shall be approved by the Department. Construction work shall not commence until a plan approval has been received from the Department. During construction the owner shall employ a registered architect and/or engineer for observation and inspections. The Department shall conduct periodic inspections throughout each project.

B. Plans and specifications shall be submitted to the Department for review and approval for projects that have an effect on:

1. The function of a space;
2. The accessibility to or of an area;
3. The structural integrity of the facility;
4. The active and/or passive fire safety systems (including kitchen equipment such as exhaust hoods or equipment required to be under an exhaust hood);
5. Doors;
6. Walls;
7. Ceiling system assemblies;
8. Exit corridors;
9. Life safety systems; or
10. That increase the occupant load or licensed capacity of the facility.

C. All subsequent addenda, change orders, field orders, and documents altering the Department review must be submitted. Any substantial deviation from the accepted documents shall require written notification, review and re-approval from the Department.

D. Cosmetic changes utilizing paint, wall covering, floor covering, etc. that are required to have a flame-spread rating or to satisfy other safety criteria shall be documented with copies kept on file at the facility and made available to the Department.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **1904. Inspections**

Construction work which violates codes or standards will be required to be brought into compliance. All projects shall obtain all required permits from the locality having jurisdiction. Construction without proper permitting shall not be inspected by the Department.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## **SECTION 2000**

### **FIRE PROTECTION, PREVENTION AND LIFE SAFETY (I)**

#### **2001. Alarms.**

A. Facilities with six (6) or more licensed beds shall have a partial, manual, automatic, supervised fire alarm system. The facility shall arrange the system to transmit an alarm automatically to a third party. The alarm system shall notify by audible and visual alarm all areas and floors of the building. The alarm system shall shut down central recirculation systems and outside air units that serve the area(s) of alarm origination as a minimum.

B. All fire, smoke, heat, sprinkler flow, and manual fire alarming devices must be connected to and activate the main fire alarm system when activated.

**HISTORY: Added by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

**2002. [Deleted].**

**Editor's Note**

Former R. 61–84.2002, titled **Fire-Resistive Rating (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2003. [Deleted].**

**Editor's Note**

Former R. 61–84.2003, titled **Vertical Openings (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2004. [Deleted].**

**Editor's Note**

Former R. 61–84.2004, titled **Wall and Partition Openings (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2005. [Deleted].**

**Editor's Note**

Former R. 61–84.2005, titled **Ceiling Openings (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2006. [Deleted].**

**Editor's Note**

Former R. 61–84.2006, titled **Firewalls (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2007. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2101.

**2008. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2102.

**2009. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2103.

SECTION 2100

GENERAL CONSTRUCTION REQUIREMENTS

**Editor's Note**

Former Section 2100, titled **Hazardous Elements of Construction**, deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2101. Floor Finishes (II).**

A. Floor coverings and finishes shall meet the requirements of the building codes.

B. All floor coverings and finishes shall be appropriate for use in each area of the facility and free of hazards, e.g., slippery surfaces. Floor finishes shall be composed of materials that permit frequent cleaning, and when appropriate, disinfection.

**HISTORY: Formerly 61–84.2007. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

## **2102. Wall Finishes (I).**

- A. Wall finishes shall meet the requirements of the building codes.
- B. Manufacturers' certifications or documentation of treatment for flame spread and other safety criteria shall be furnished and maintained.

**HISTORY:** Formerly 61–84.2008. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2103. Curtains and Draperies (II).**

In bathrooms and resident rooms, window treatments shall be arranged in a manner to provide privacy.

**HISTORY:** Formerly 61–84.2009. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2104. Gases (I).**

A. Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. "No Smoking" signs shall be posted conspicuously, and cylinders shall be properly secured in place.

B. Smoking shall be allowed only in designated areas in accordance with the facility smoking policy. No smoking is permitted in resident rooms or staff bedrooms or bath/restrooms.

**HISTORY:** Formerly 61–84.2206. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2105. Furnishings/Equipment (I).**

A. The facility shall maintain the physical plant to be free of fire hazards or impediments to fire prevention.

B. No portable electric or unvented fuel heaters shall be permitted in the facility.

C. Fireplaces and fossil-fuel stoves, e.g., wood-burning, shall have partitions or screens or other means to prevent burns. Fireplaces shall be vented to the outside. "Unvented" type gas logs are not allowed. Gas fireplaces shall have a remote gas shutoff within the room and not inside the fireplace.

D. Wastebaskets, window dressings, cubicle curtains, mattresses, and pillows shall be noncombustible, inherently flame-resistant, or treated or maintained flame-resistant.

**HISTORY:** Formerly 61–84.2207. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

# **SECTION 2200**

## **EXITS**

## **2201. Number and Locations of Exits (I).**

A. The facility shall maintain halls, corridors and all other means of egress from the building to be free of obstructions.

B. Each resident room shall open directly to an approved exit access corridor without passage through another occupied space or shall have an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances.

**EXCEPTION:** When two resident rooms share a common "sitting" area that opens onto the exit access corridor.

**HISTORY:** Formerly 61–84.2301. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2202. [Deleted].**

### **Editor's Note**

Former R. 61–84.2202, titled **Automatic Sprinkler System (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2203. [Deleted].**

**Editor's Note**

Former R. 61–84.2203, titled **Fire Alarms (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2204. [Deleted].**

**Editor's Note**

Former R. 61–84.2204, titled **Smoke Detectors (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2205. [Deleted].**

**Editor's Note**

Former R. 61–84.2205, titled **Flammable Liquids (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2206. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2104.

**2207. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2105.

SECTION 2300

WATER SUPPLY/HYGIENE

**2301. Design and Construction (II).**

A. Resident and staff hand washing lavatories and resident showers/tubs shall be supplied with hot and cold water at all times.

B. Plumbing fixtures that require hot water and are accessible to residents shall be supplied with water that is thermostatically controlled to a temperature of at least 100 degrees F. and not to exceed 120 degrees F. at the fixture.

C. The water heater or combination of heaters shall be sized to provide at least six gallons per hour per bed at the above temperature range. (II)

D. Hot water supplied to the kitchen equipment/utensil washing sink shall be supplied at 120 degrees F. provided all kitchen equipment/utensils are chemically sanitized. For those facilities sanitizing with hot water, the sanitizing compartment of the kitchen equipment/utensil washing sink shall be capable of maintaining the water at a temperature of at least 180 degrees F.

E. Hot water provided for washing linen/clothing shall not be less than 160 degrees F. Should chlorine additives or other chemicals which contribute to the margin of safety in disinfecting linen/clothing be a part of the washing cycle, the minimum hot water temperature shall not be less than 110 degrees F., provided hot air drying is used. (II)

**HISTORY:** Formerly 61–84.2401. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2302. Cross-connections (I).**

There shall be no cross-connections in plumbing between safe and potentially unsafe water supplies. Water shall be delivered at least two delivery pipe diameters above the rim or points of overflow to each fixture, equipment, or service unless protected against back-siphonage by approved vacuum breakers or other approved back-flow preventers. A faucet or fixture to which a hose may be attached shall have an approved vacuum breaker or other approved back-flow preventer.

**HISTORY:** Formerly 61–84.2405. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 2400

### ELECTRICAL

#### **2401. Receptacles (II).**

A. Resident Room. Each resident room shall have duplex grounding type receptacles located to include one at the head of each bed.

B. Corridors. Duplex receptacles for general use shall be installed approximately 50 feet apart in all corridors and within 25 feet of the ends of corridors.

**HISTORY:** Formerly 61–84.2504. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2402. Ground Fault Protection (I).**

A. Ground fault circuit-interrupter protection shall be provided for all outside receptacles and bathrooms.

B. The facility shall provide ground fault circuit-interrupter protection for any receptacles within six feet of a sink or any other wet location. If the sink is an integral part of the metal splashboard grounded by the sink, the entire metal area is considered part of the wet location.

**HISTORY:** Formerly 61–84.2505. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2403. Exit Signs (I).**

A. In facilities licensed for six or more beds, required exits and ways to access thereto shall be identified by electrically-illuminated exit signs.

B. Changes in egress direction shall be marked with exit signs with directional arrows.

C. Exit signs in corridors shall be provided to indicate two directions of exit.

**HISTORY:** Formerly 61–84.2506. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2404. Emergency Electric Service (I).**

Emergency electric services shall be provided as follows:

A. Exit lights, if required;

B. Exit access corridor lighting;

C. Illumination of means of egress;

D. Fire detection and alarm systems, if required.

**HISTORY:** Formerly 61–84.2507. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2405. [Renumbered].**

##### **Editor's Note**

See, now S.C. Code Regs 61–84.2302.

#### **2406. [Deleted].**

##### **Editor's Note**

Former R. 61–84.2406, titled **Design and Construction of Wastewater Systems (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 2500

### HEATING, VENTILATION, AND AIR CONDITIONING

#### **2501. General (II).**

- A. The HVAC system shall be inspected at least once a year by a certified/licensed technician.
- B. The facility shall maintain a temperature of between 72 and 78 degrees F. in resident areas.
- C. No HVAC supply or return grill shall be installed within three feet of a smoke detector. (I)
- D. HVAC grills shall not be installed in floors.
- E. Intake air ducts shall be filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials. The system shall not discharge in such a manner that would be an irritant to the residents/staff/volunteers.
- F. All kitchen areas shall be adequately ventilated in order for all areas to be kept free from excessive heat, steam, condensation, vapors, smoke, and fumes.
- G. Each bath/restroom shall have either operable windows or have approved mechanical ventilation.

**HISTORY:** Formerly 61–84.2601. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2502. [Deleted].**

**Editor's Note**

Former R. 61–84.2502, titled **Panelboards (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2503. [Deleted].**

**Editor's Note**

Former R. 61–84.2503, titled **Lighting**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2504. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2401.

#### **2505. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2402.

#### **2506. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2403.

#### **2507. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2404.

## SECTION 2600

### PHYSICAL PLANT

#### **2601. Facility Accommodations/Floor Area (II).**

- A. Consideration shall be given to the preferences of the residents in determining an appropriate homelike atmosphere in resident rooms and activity/dining areas.

B. There shall be sufficient living arrangements providing for residents' quiet reading, study, relaxation, entertainment, or recreation, to include living, dining, and recreational areas available for residents' use.

C. Minimum square footage requirements shall be as follows: (II)

1. Twenty square feet per licensed bed of living and recreational areas combined, excluding bedrooms, halls, kitchens, dining rooms, bathrooms, and rooms not available to the residents;

2. Fifteen square feet of floor space in the dining area per licensed bed.

D. All required care/services furnished at the facility shall be provided in a manner which does not require residents to ambulate from one site to another outside the building(s), nor which impedes residents from ambulating from one site to another due to the presence of physical barriers.

E. Methods for ensuring visual and auditory privacy between resident and staff/volunteers/visitors shall be provided as necessary.

**HISTORY:** Formerly 61–84.2701. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2602. Resident Rooms.**

A. A resident shall have the choice to furnish his/her room. Whether the resident or the facility furnishes the room, each resident room shall be equipped with the following as a minimum for each resident:

1. A comfortable single bed having a mattress with moisture-proof cover, sheets, blankets, bedspread, pillow, and pillowcases; roll-away type beds, cots, bunkbeds, and folding beds shall not be used. It is permissible to remove a resident bed and place the mattress on a platform or pallet or use a recliner provided the physician or other authorized healthcare provider has approved and the decision is documented in the ICP. (II)

**EXCEPTION:** In the case of a married couple sharing the same room, a double bed is permitted if requested. For all other requirements, this shall be considered a bedroom with two beds.

2. A closet or wardrobe, a bureau consisting of at least three drawers, and a compartmentalized bedside table/nightstand to adequately accommodate each resident's personal clothing, belongings, and toilet articles. Built-in storage is permitted.

**EXCEPTION:** In existing facilities, if square footage is limited, residents may share these storage areas; however, specific spaces within these storage areas shall be provided by the facility particular to each resident.

3. A comfortable chair for each resident occupying the room. In facilities licensed prior to the promulgation of this regulation, if the available square footage of the resident room will not accommodate a chair for each resident or if the provision of multiple chairs impedes resident ability to freely and safely move about within their room, at least one chair shall be provided by the facility and provisions made to have additional chairs available for temporary use in the resident's room by visitors.

B. If hospital-type beds are used, there shall be at least two lockable casters on each bed, located either diagonally or on the same side of the bed.

C. Beds shall not be placed in corridors, solaria, or other locations not designated as resident room areas. (I)

D. No resident room shall contain more than three beds. (II)

E. No resident room shall be located in a basement.

F. Access to a resident room shall not be by way of another resident room, toilet, bathroom, or kitchen.

G. Equipment such as bedpans, urinals, and hot water bottles, necessary to meet resident needs, shall be provided by the facility. Portable commodes shall be permitted in resident rooms only at night or in case of temporary illness, and suitably stored at all other times. (II)

**EXCEPTION:** Permanent positioning of a portable commode at bedside shall only be permitted if the room is private, the commode is maintained in a sanitary condition, and the room is of sufficient size to accommodate the commode.

H. Side rails may be utilized when required for safety and when ordered by a physician or other authorized healthcare provider. When there are special concerns, e.g., residents with dementia, side rail usage shall be monitored by staff members as per facility policies and procedures. (I)

I. In semi-private rooms, when personal care is being provided, arrangements shall be made to ensure privacy, e.g., portable partitions or cubicle curtains when needed or requested by a resident.

J. There shall be at least one (1) mirror in each resident room or resident bathroom. As an exception, when a resident's condition is such that having a mirror may be detrimental to his/her well-being, e.g., agitation and confusion associated with dementia, mirrors are not required.

K. Consideration shall be given to resident compatibility in the assignment of rooms for which there is multiple occupancy.

L. At least one private room shall be available in the facility in order to provide assistance in addressing resident compatibility issues, resident preferences, and accommodations for residents with communicable disease.

**HISTORY: Formerly 61-84.2702. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **2603. Resident Room Floor Area.**

A. Each resident room shall be an outside room with an outside window or door. (I)

B. In non-apartment units, the resident sleeping room floor area is a usable or net area and does not include wardrobes (built-in or freestanding), closets, or the entry alcove to the room. The following is the minimum floor space allowed: (II)

1. Rooms for only one resident: 100 square feet;
2. Rooms for more than one resident: 80 square feet per resident.

C. Resident sleeping rooms shall be of sufficient size to allow three feet between two beds. (II)

**HISTORY: Formerly 61-84.2703. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.**

### **2604. Bathrooms/Restrooms (II).**

A. Separate bathroom facilities shall be provided for live-in staff members/volunteers/public and/or family.

B. Toilets shall be provided in ample number to serve the needs of staff members/volunteers/public. The minimum number for residents shall be one toilet for each six licensed beds or fraction thereof.

C. There shall be at least one (1) handwash lavatory adjacent to each toilet. Liquid soap shall be provided in public restrooms and bathrooms used by more than one resident. Communal use of bar soap is prohibited. A sanitary individualized method of drying hands shall be available at each lavatory.

D. There shall be one bathtub or shower for each eight licensed beds or fraction thereof.

E. All bathtubs, toilets, and showers used by residents shall have approved grab bars securely fastened in a usable fashion.

F. Privacy shall be provided at toilets, urinals, bathtubs, and showers.

G. Toilet facilities shall be at or adjacent to the kitchen for kitchen employees.

H. Facilities for handicapped persons shall be provided whether or not any of the residents are classified as handicapped.

I. All bathroom floors shall be entirely covered with an approved nonabsorbent covering. Walls shall be nonabsorbent, washable surfaces to the highest level of splash.

J. There shall be a mirror above each bathroom lavatory for residents' grooming.

K. An adequate supply of toilet tissue shall be maintained in each bathroom.

L. Easily cleanable receptacles shall be provided for waste materials. Such receptacles in toilet rooms for women shall be covered.

M. Bar soap, bath towels, and washcloths shall be provided to each resident as needed. Bath linens assigned to specific residents may not be stored in centrally located bathrooms. Provisions shall be made for each resident to properly keep their bath linens in their room, i.e., on a towel hook/bar designated for each resident occupying that room, or bath linens to meet resident needs shall be distributed as needed, and collected after use and stored properly, per Section 1706.

**EXCEPTION:** Bath linens assigned to specific residents for immediate use may be stored in the bathroom provided the bathroom serves a single occupancy (one resident) room, or is shared by occupants of adjoining rooms, for a maximum of six residents. A method that distinguishes linen assignment and discourages common usage shall be implemented.

**HISTORY:** Formerly 61–84.2704. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2605. Doors (II).**

- A. All resident rooms and bath/restrooms shall have opaque doors for the purpose of privacy.
- B. All glass doors, including sliding or patio type doors shall have a contrasting or other indicator that causes the glass to be observable, e.g., a decal located at eye level.
- C. Bath/restroom door widths shall be at least 36 inches wide.
- D. Doors to resident occupied rooms shall be at least 36 inches wide.
- E. Doors that have locks shall be unlockable and openable with one action.
- F. If resident room doors are lockable, there shall be provisions for emergency entry. There shall not be locks that cannot be unlocked and operated from inside the room.
- G. All resident room doors shall be solid-core. Resident room doors shall be rated and provided with closers and latches as required by the codes referenced in Section 1902.

**HISTORY:** Formerly 61–84.2705. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2606. Ramps (II).**

- A. At least one exterior ramp, accessible by all residents, staff members/volunteers, and visitors shall be installed from the first floor to grade.
- B. The ramp shall serve all portions of the facility where residents are located.
- C. The surface of a ramp shall be of nonskid materials.
- D. Ramps in facilities with 11 or more licensed beds shall be of noncombustible construction. (I)
- E. Ramps shall discharge onto a surface that is firm and negotiable by a wheelchair in all weather conditions and to a location accessible for loading into a vehicle.

**HISTORY:** Formerly 61–84.2708. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2607. Handrails/Guardrails (II).**

Handrails shall be provided on at least one side of each corridor/hallway.

**EXCEPTION:** In facilities with 10 beds or less, handrails are not required for interior corridor/hallway.

**HISTORY:** Formerly 61–84.2710. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2608. Screens (II).**

Windows, doors and openings intended for ventilation shall be provided with insect screens.

**HISTORY:** Formerly 61–84.2711. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2609. Windows/Mirrors.**

- A. The window dimensions and maximum height from floor to sill shall be in accordance with the building codes, as applicable.

B. Where resident safety awareness is impaired, safety (non-breakable) mirrors shall be used.

**HISTORY:** Formerly 61–84.2712. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2610. Janitor's Closet (II).**

There shall be a lockable janitor's closet in all facilities. Each closet shall be equipped with a mop sink or receptor and space for the storage of supplies and equipment.

**HISTORY:** Formerly 61–84.2713. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2611. Storage Areas.**

A. Adequate general storage areas shall be provided for resident and staff/volunteer belongings, equipment, and supplies as well as clean linen, soiled linen, wheel chairs, and general supplies and equipment.

B. Storage buildings on the premises shall meet the building codes requirements regarding distance from the licensed building. Storage in buildings other than on the facility premises shall be secure and accessible. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

C. In mechanical rooms used for storage, the stored items shall be located away from mechanical equipment and shall not be a type of storage that might create a fire or other hazard. (I)

D. Supplies/equipment shall not be stored directly on the floor. Supplies/equipment susceptible to water damage/contamination shall not be stored under sinks or other areas with a propensity for water leakage.

E. In facilities licensed after the promulgation of these regulations with 16 beds or more, there shall be a soiled linen storage room which shall be designed, enclosed, and used solely for that purpose, and provided with mechanical exhaust directly to the outside.

**HISTORY:** Formerly 61–84.2714. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2612. Telephone Service.**

A. At least one (1) telephone shall be available on each floor of the facility with at least one (1) active main or fixed-line telephone service available.

B. At least one telephone shall be provided by the facility on each floor for staff members/volunteers to conduct routine business of the facility and to summon assistance in the event of an emergency; pay station phones are not acceptable for this purpose. Residents shall have telephone privacy pursuant to Section 1001.L.

**HISTORY:** Formerly 61–84.2715. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2613. Location.**

A. Transportation. The facility shall be served by roads that are passable at all times and are adequate for the volume of expected traffic.

B. Parking. The facility shall have a parking area to reasonably satisfy the needs of residents, staff members/volunteers, and visitors.

C. Access to firefighting equipment. Facilities shall maintain adequate access to and around the building(s) for firefighting equipment. (I)

**HISTORY:** Formerly 61–84.2716. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## **2614. Outdoor Area.**

A. Outdoor areas where unsafe, unprotected physical hazards exist shall be enclosed by a fence or a natural barrier of a size, shape, and density that effectively impedes travel to the hazardous area. (I)

B. Mechanical or equipment rooms that open to the outside of the facility shall be kept protected from unauthorized individuals. (II)

C. If a swimming pool is part of the facility, it shall be designed, constructed, and maintained pursuant to R.61-51. (II)

D. There shall be sufficient number of outside tables and comfortable chairs to meet the needs of the residents.

**HISTORY:** Formerly 61-84.2717. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 2700

### SEVERABILITY

#### **2701. General.**

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

**HISTORY:** Formerly 61-84.2801. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2702. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61-84.2602.

#### **2703. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61-84.2603.

#### **2704. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61-84.2604.

#### **2705. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61-84.2605.

#### **2706. [Deleted].**

**Editor's Note**

Former R. 61-84.2706, titled **Elevators (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2707. [Deleted].**

**Editor's Note**

Former R. 61-84.2707, titled **Corridors (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

#### **2708. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61-84.2606.

**2709. [Deleted].**

**Editor's Note**

Former R. 61–84.2709, titled **Landings (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

**2710. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2607.

**2711. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2608.

**2712. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2609.

**2713. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2610.

**2714. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2611.

**2715. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2612.

**2716. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2613.

**2717. [Renumbered].**

**Editor's Note**

See, now S.C. Code Regs 61–84.2614.

SECTION 2800

GENERAL

**2801. General.**

Conditions that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

**HISTORY:** Formerly 61–84.2901. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4484, eff June 26, 2015.

## SECTION 2900

### GENERAL [Renumbered]

#### **2901. [Renumbered].**

##### **Editor's Note**

See, now S.C. Code Regs 61–84.2801.

#### **61–86.1. STANDARDS OF PERFORMANCE FOR ASBESTOS PROJECTS.**

(Statutory Authority: Sections 44–1–140; 48–1–30; 44–87–10 et seq.)

##### **Editor's Note**

Unless noted otherwise, the following constitutes the history for 61–86.1, Section I to Section XXV.

**HISTORY:** Added by State Register Volume 10, Issue No. 6, eff June 27, 1986. Amended by State Register Volume 12, Issue No. 5, eff May 27, 1988; State Register Volume 20, Issue No. 6, Part 1, eff June 28, 1996; State Register Volume 20, Issue No. 9, eff September 27, 1996; State Register Volume 22, Issue No. 5, eff May 22, 1998; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 32, Issue No. 6, eff June 27, 2008; State Register Volume 35, Issue No. 5, eff May 27, 2011.

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#### **SECTION I. DEFINITIONS.**

1. “Abatement” - Procedures to control fiber release from regulated asbestos-containing materials. This includes removal, enclosure, encapsulation, repair, and any associated preparation, clean up and disposal activities having the potential to disturb regulated asbestos-containing material.
2. “Adequately wet” - To sufficiently mix or penetrate with liquid to prevent the potential release of particulates. The absence of visible emissions is not sufficient evidence of being adequately wet.
3. “Aggressive clearance sampling” - A method of sampling which uses electric fan(s), electric leaf blower(s), and other devices to simulate vigorous activity in the abated area while air samples are being collected.

4. "AHERA" - Regulations developed pursuant to the Asbestos Hazard Emergency Response Act, 40 CFR Part 763, Asbestos Containing Materials in Schools (October 30, 1987).
5. "AIHA" - American Industrial Hygiene Association.
6. "Airlock" - A chamber which permits entrance and exit with minimum air movement between a contaminated area and an uncontaminated area, consisting of two doorways protected by two overlapping polyethylene sheets and separated by a sufficient distance such that one passes through one doorway into the chamber, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway. The airlock maintains a pressure differential between the contaminated and uncontaminated areas, thereby minimizing flow-through contamination further.
7. "Air sampler" - A person licensed by the Department to implement air-monitoring plans and analysis schemes during abatement.
8. "Air sampling" - A method such as NIOSH 7400 for PCM, the OSHA Reference Method, 40 CFR 763 Appendix A for TEM, or an equivalent method accepted by the Department used to determine the fiber content of a known volume of air during a specified period of time.
9. "Amended water" - Water to which a surfactant (for example, a non-sudsing detergent) has been added.
10. "Area air sampling" - Any form of air sampling whereby the sampling device is placed at a stationary location either inside or outside the regulated work area.
11. "Asbestos" - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.
12. "Asbestos abatement entity" - Any individual, partnership, firm, association, corporation, sole proprietorship or other business concern, as well as an employee or member of any governmental, religious, or social organization that is involved in asbestos abatement.
13. "Asbestos containing material (ACM)" - Material containing asbestos of any type, either alone or mixed with other materials, in an amount greater than one percent (1%) as determined by using the method specified in 40 CFR Part 763, Appendix A, Subpart F, Section 1, as amended, or an accepted equivalent. (NOTE: "Appendix A to Subpart F" has been redesignated as, and shall hereinafter be referred to as, "Appendix E to Subpart E" - 60 FR 31917, June 19, 1995.)
14. "Asbestos containing waste materials" - As applied to demolition and renovation operations, this term includes regulated asbestos-containing waste materials and materials contaminated with asbestos, including disposable equipment and clothing.
15. "Asbestos project" - Any activity associated with abatement including inspection, design, air monitoring, in-place management, encapsulation, enclosure, renovation, repair, removal, any disturbance of regulated asbestos containing materials (RACM), and demolition of a facility.
16. "Asbestos project design" - A written or graphic plan prepared by an accredited project designer specifying how an asbestos abatement project will be performed that includes, but is not limited to, scope of work and technical specifications.
17. "Asbestos training course" - A Department-approved initial or refresher course in any discipline listed herein (for example, workers, supervisors, management planners, etc.) that meets the requirements of this regulation and is acceptable for licensing purposes.
18. "Asbestos training course instructor" - A Department-approved individual who will teach work practice topics, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course and who meets the qualifications of this regulation.
19. "Asbestos training course provider" - The person, sole proprietorship, public corporation, or incorporated entity that meets the qualifications of this regulation to provide instruction in any of the work practice topics or disciplines, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course.
20. "ASHARA" - Regulations developed pursuant to 40 CFR Part 763, Subpart E, Appendix C Model Accreditation Plan, Asbestos School Hazard Abatement Reauthorization Act (November 28, 1992).
21. "Authorized visitor" - The facility owner/operator, or any representative of a regulatory or other agency having jurisdiction over the project. This is limited to government project inspectors,

police, paramedics, fire-safety personnel, nuclear plant operators, and insurance loss prevention safety auditors, or other personnel as approved on a case-by-case basis by the Department.

22. “Background monitoring” - Area sampling performed prior to abatement to obtain an index of existing airborne fiber levels under typical activity.

23. “Building inspection” - An activity undertaken at a facility by a Department-licensed asbestos building inspector to determine the presence and location of regulated and non-regulated ACM, and to assess the condition of materials identified as ACM. This includes visual or physical examination and bulk sample collection.

24. “Building inspector” - A person licensed by the Department to examine a facility for the presence of ACM, to identify and assess the condition of the material, and to collect bulk samples.

25. “Category I nonfriable asbestos containing material (ACM)” - Nonfriable asbestos or nonfriable asbestos-containing packing, gaskets, and resilient floor covering; and asphalt roofing products containing greater than one percent (1%) asbestos as determined using the method specified in 40 CFR Part 763, Appendix E, Subpart E, or an accepted equivalent.

26. “Category II nonfriable ACM” - Any material that cannot, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations, excluding Category I nonfriable ACM and containing greater than one percent (1%) asbestos as determined using the methods specified in 40 CFR Part 763, Appendix E, Subpart E, or an accepted equivalent.

27. “Clean room” - An uncontaminated area or room that is part of the decontamination enclosure system and that has provisions for storage of street clothing and protective equipment.

28. “Clearance monitoring” - Area air sampling performed using Department accepted aggressive clearance sampling techniques to determine the airborne concentrations of residual fibers upon conclusion of asbestos abatement.

29. “Commercial labor provider” - Any individual, partnership, corporation, or other business concern that is not engaged in an asbestos project but does provide temporary workers or supervisors to the owner/operator of the project.

30. “Contractor” - Any individual, partnership, corporation or other business concern that performs asbestos abatement but is not a permanent employee of the facility owner.

31. “Control measure” - Use of amended water, negative pressure differential equipment, encapsulant, high efficiency particulate air filtration device, glove bag or other state-of-the-art equipment designed to prevent fiber release into the air.

32. “Critical barrier” - At minimum, two independent layers of 6-mil plastic sheeting applied to any opening into a work area in a manner that creates a leak-tight seal within the work area to isolate vents, windows, doors, switches, outlets, and any other cavity or opening to the contaminated work area.

33. “Cut” - To penetrate with a sharp-edged instrument. This includes sawing, but may not include shearing, slicing, or punching.

34. “Decontamination enclosure system” - An enclosed area adjacent and connected to the regulated work area consisting of an equipment room, shower area, and clean room, each separated by airlocks, that is used for the decontamination of employees, materials, and equipment that are contaminated with asbestos.

35. “Demolition” - Wrecking or taking out any load-supporting structural member of a facility together with any related handling operations, the burning of any facility, or moving of a structure.

36. “Department” - The South Carolina Department of Health and Environmental Control’s Asbestos Section.

37. “Electrical generating facility” - Any establishment primarily engaged in the generation, transmission and/or distribution of electrical energy for sale.

38. “Emergency operation” - A renovation or demolition operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, will present an imminent safety or public health hazard, will cause equipment damage, or will impose an unreasonable financial burden. This term specifically excludes routine equipment maintenance.

39. “Encapsulation” - A form of abatement involving the treatment of regulated asbestos-containing material (RACM) with a liquid that covers the surface with a protective coating (bridging) or embeds fibers in an adhesive matrix (penetrating) to prevent the release of asbestos fibers.

40. “Enclosure” - A form of abatement involving placement of a leak-tight, impermeable, permanent barrier to prevent access to regulated asbestos-containing material and to prevent the release of asbestos fibers.

41. “EPA” - United States Environmental Protection Agency.

42. “Equipment room” - A contaminated area or room that is part of the decontamination enclosure system and that has provisions for the storage of contaminated clothing and equipment.

43. “Examination date” - The date printed on the Departmental Asbestos Abatement License that indicates the date of successful completion of an examination administered upon completion of an asbestos training course.

44. “F/cc” - Fibers per cubic centimeter.

45. “Facility” - Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any bridge; any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this requirement is included in this definition, regardless of its current use or function.

46. “Facility component” - Any part of a facility including equipment.

47. “Friable” - Refers to ACM, which may, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations. This also refers to previously non-friable ACM after such material becomes damaged to the extent that when dry, can be or has been crumbled, pulverized, or reduced to powder.

48. “Friable asbestos containing material” - Any material that, when dry, can be or has been crumbled, pulverized, or reduced to powder and contains greater than one percent (1%) asbestos as determined using the method specified in 40 CFR Part 763, Appendix E, Subpart E, as amended, or an accepted equivalent.

49. “Goose neck” - Process for sealing the outer bag by twisting the opening of the bag, folding twisted portion of bag over, and creating a loop. Adequately secure the opening of the bag to the base of the twist, using duct tape.

50. “Glovebag” - A sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Information on glovebag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration’s (OSHA’s) final rules on occupational exposure to asbestos, 29 CFR 1926.1101 (August 10, 1994), as amended, and any subsequent amendments or editions.

51. “Grind” - To reduce to powder or small fragments. Grinding includes mechanical chipping or drilling.

52. “HEPA filter” - A high efficiency particulate air filter that will capture particles with an aerodynamic diameter of 0.3 micrometers with a minimum efficiency of 99.97 percent.

53. “Homogeneous area” - Area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture.

54. “HVAC” - Heating, ventilation, and air conditioning.

55. “Industrial manufacturing facility” - Any establishment whose Standard Industrial Classification code falls within Major Groups 20 through 39, excluding any office space that is part of such an establishment.

56. “In poor condition” - Refers to any ACM where the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

57. "Installation" - Any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of a single owner or operator (or of owners or operators under common control).
58. "Issue date" - The date a license is issued by the Department.
59. "Leak-tight" - Dust, solids, or liquids cannot escape or spill out.
60. "License" - A document issued by the Department that allows an asbestos abatement contractor, building inspector, project designer, management planner, air sampler, supervisor, worker, or other to engage in asbestos projects.
61. "Long-term, in-house contractor" - A contractor having a long-term, often multi-year, contractual arrangement with an industrial manufacturing or electrical generating facility to provide construction and maintenance services, including asbestos abatement. The employees of a designated long-term, in-house contractor shall be covered under the group license of the assigned facility.
62. "Management planner" - A person licensed in accordance with the requirements of this regulation who interprets inspection reports, conducts hazard assessments of asbestos-containing materials, determines appropriate response actions, develops a schedule for implementing response actions, and prepares written management plans.
63. "Manometer" - Instrument for the measurement of gas pressure whose units are represented in inches of water column.
64. "Minor project" - A project where 25 or fewer square or linear feet of regulated asbestos-containing material (RACM) are removed, or where 10 or fewer cubic feet of RACM off a facility component are cleaned up.
65. "Movable object" - A structure within the work area that can be moved (e.g., chair, desk, etc.).
66. "Negative pressure differential equipment" - A portable exhaust system equipped with a HEPA filter.
67. "NESHAP" - National Emission Standards for Hazardous Air Pollutants, 40 CFR 61, Subpart M, February 3, 1994, as amended, and any subsequent amendments or editions.
68. "NESHAP project" - An asbestos project which involves at least 160 square feet or 260 linear feet of regulated asbestos containing material (RACM), or 35 or more cubic feet of RACM off a facility component such that the area or length could not be measured prior to abatement. If several contemporaneous projects in the same area within the same building being performed by the same contractor are smaller than 160 square or 260 linear feet individually but add up to that amount, then the combination of the smaller projects shall be considered one NESHAP project.
69. "NIOSH" - National Institute for Occupational Safety and Health.
70. "Non-industrial facility"- Any public, private, institutional or governmental entity that does not meet the definition of an electrical generating or industrial manufacturing facility as defined in this regulation.
71. "Operation and maintenance (O&M) activity" - The disturbance of regulated asbestos-containing material only when required in the performance of an emergency or routine maintenance activity that is not intended solely as asbestos abatement. In no event shall the amount of ACM disturbed exceed that which can be contained in one glovebag or 6-mil polyethylene bag that shall not exceed 60 inches in length and width.
72. "O&M worker" - An individual licensed under a facility group license to perform an operation and maintenance activity at that facility.
73. "OSHA" - Occupational Safety and Health Administration.
74. "Owner/operator" - Any person or contractor who owns, leases, operates, controls, or supervises a facility being demolished or renovated, or any person who operates, controls, or supervises the demolition or renovation operation, or both.
75. "Owner's representative" - A licensed supervisor, management planner, project designer, or air sampler designated by the facility owner to manage the asbestos project, and who serves to ensure that abatement work is completed according to specification and in compliance with all relevant statutes and regulations.

76. "Personal air sampling" - A method used to obtain an index of an employee's exposure to airborne fibers. Samples are collected outside the respirator in the worker's breathing zone.

77. "Planned renovation operations" - A renovation operation, or a number of such operations, in which some RACM will be disturbed, removed, or stripped within a given period of time and that can be predicted. Individual non-scheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

78. "Project designer" - A person licensed in accordance with the requirements of this regulation who is directly responsible for planning all phases of an asbestos abatement project design from project site preparation through complete disassembly of all abatement area barriers.

79. "Reciprocity" - A written agreement between another state and South Carolina to use the same or equivalent auditing criteria when evaluating training course materials, course presentations, and instructor qualifications.

80. "Regulated area" - An area established by the owner/operator of an asbestos project to demarcate areas where asbestos abatement activities are conducted; any adjoining area where debris and waste from such asbestos work is stored; and any work area within which airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed, the permissible exposure limit.

81. "Regulated asbestos-containing material (RACM)" - (a) Friable asbestos-containing material; (b) Category I nonfriable ACM that has become friable; (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, drilling, or abrading; or (d) Category II nonfriable ACM that is likely to become or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations subject to this regulation.

82. "Removal" - Taking out RACM or facility components that contain or are covered with RACM from any facility.

83. "Renovation" - Altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

84. "Repair" - Returning damaged asbestos-containing material to an undamaged condition or to an intact state so as to prevent fiber release.

85. "Resilient floor covering" - Asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing greater than one percent (1%) asbestos as determined using polarized light microscopy according to the method specified in 40 CFR Part 763, Appendix E, Subpart E, Polarized Light Microscopy, or an accepted equivalent.

86. "Shower room" - A room located between the clean room and the equipment room in the decontamination enclosure system containing a shower with hot and cold or warm running water controllable at the tap.

87. "Small project" - A project where more than 25 but fewer than 160 square feet or more than 25 but fewer than 260 linear feet of RACM are to be abated, or where more than 10 but fewer than 35 cubic feet of RACM off a facility component are to be cleaned up.

88. "Start date" - The date printed on the Departmental-issued asbestos abatement project license, which indicates when asbestos renovation or demolition operations, including any abatement activity having the potential to disturb RACM, will begin.

89. "Strip" - To remove RACM from any part of a facility or facility component.

90. "Structural member" - Any load-supporting member of a facility, such as beams and load-supporting walls; or any non-load-supporting member, such as ceilings and non-load-supporting walls.

91. "Structures per square millimeter" - Reporting measure for Transmission Electron Microscopy (TEM) Analysis. TEM clearance requires fewer than 70 structures per square millimeter (70s/mm<sup>2</sup>).

92. "Supervisor" - A person licensed by the Department and designated as the contractor's representative to provide direct on-site supervision and guidance to workers engaged in abatement of RACM.

93. "Surfactant" - A chemical wetting agent added to water to improve penetration, such as a non-sudsing detergent.

94. “Temporary storage license” - A license issued by the Department that authorizes storage of asbestos waste from small and minor projects at a secure location deemed acceptable by the Department.

95. “Variance” - Written Departmental approval for the use of alternative work practices at an asbestos project.

96. “Visible emissions” - Any emissions that are visually detectable without the aid of instruments that originate from RACM or asbestos-containing waste material or a regulated work area.

97. “Waste generator” - Any owner/operator of an asbestos project covered by this regulation whose act or process produces asbestos-containing waste material.

98. “Waste shipment record” - The shipping document, required to be originated, prepared, and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

99. “Wet cleaning” - The process of removing asbestos contamination from facility surfaces and objects by using cloths, mops, or other cleaning tools that have been dampened with amended water.

100. “Work area” - Designated rooms, spaces, or areas in which asbestos abatement activities are to be undertaken, or that may be contaminated as a result of such abatement activities.

101. “Worker” - A person licensed by the Department to perform asbestos abatement under the direct guidance of an accredited and licensed supervisor.

102. “Working day” - Monday through Friday, including holidays that fall on any of the days Monday through Friday.

## **SECTION II. APPLICABILITY.**

A. The requirements of this regulation shall apply to: any owner/operator, building inspector, management planner, project designer, contractor, asbestos abatement entity, air sampler, commercial labor provider, supervisor, worker, non-industrial facility owner and/or operator, or demolition contractor involved in the inspection, in-place management, design, removal, encapsulation, enclosure, renovation, repair, demolition activity, or any other disturbance of RACM; and any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.

B. There are no size limits for abatement projects involving RACM for which the applicable requirements of this regulation shall not apply unless otherwise specified.

C. An owner/operator may request that the Department determine whether a project is an asbestos project subject to the requirements of this regulation.

D. Asbestos projects occurring at a private residential structure of four units or fewer may be exempt from the requirements of this regulation unless:

1. Performed by a person or persons holding an asbestos abatement license.

2. Performed as part of a larger commercial or public project, such as, but not limited to, highway construction; development of a shopping mall, industrial facility, other private development; or urban renewal, etc.

3. The project involves multiple structures within a compact area (“city block”) under the ownership and/or control of a single owner and/or operator. Examples would be a municipality clearing a block of houses for urban renewal purposes or SCDOT clearing a row of houses for a highway-right-of-way project.

4. The structure meets the definition of an installation.

5. The residential structure is being burned for fire training.

E. If asbestos projects occur at separate buildings (different school buildings, for example) then each separate building shall be considered a separate project.

## **SECTION III. ASBESTOS LICENSE FEE SCHEDULE.**

A. Applicability.

1. The requirements of this Section shall apply to: any owner/operator, asbestos abatement entity, building inspector, management planner, project designer, contractor, asbestos abatement entity, air sampler, commercial labor provider, supervisor, worker, non-industrial facility owner and/or operator, demolition contractor involved in the inspection, in-place management, design, removal, renovation, encapsulation, enclosure, repair, clean-up, demolition activity, or any other disturbance of RACM; and any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.

2. Acceptable methods of payment shall be by check or money order made payable to SCDHEC, by credit card (VISA, MasterCard, or Discover), or cash.

3. Each separate building at a multi-building site shall be considered a separate asbestos project, and fees will be assessed for each.

**B. Personnel Licensing Fees.**

1. No application will be processed unless accompanied by the required fee.

2. Departmental receipt and deposit of fees submitted with an application shall in no way indicate approval of the application or guarantee the issuance of a license.

3. Fees shall not be refunded if a license application is denied per Section IV.F.

4. Fees for any duplicate original license shall be \$10.00.

5. Fee schedule: Individual license fees are assessed on a per person per discipline basis.

a. Contractor - \$100.00

b. Building Inspector - \$100.00

c. Air Sampler - \$100.00

d. Supervisor (Any type) - \$50.00

e. Worker (Any type) - \$10.00

6. Facility Operation & Maintenance (O&M) Worker Group License Fee Schedule:

a. The minimum fee for an O&M Worker Group License is \$25.00 and the maximum is \$500.00.

b. Fee Schedule:

(1) Up to 10 people - \$25.00 minimum fee

(2) 11 to 20 people - \$2.50 per person

(3) 21 to 50 people - \$5.00 per person

(4) 51 to 90 people - \$7.50 per person

(5) 91 or more persons - \$500.00 minimum fee

**C. Renovation Project Fees.**

1. The Department shall collect project license fees based on all RACM being removed and ACM rendered regulated by use of destructive removal techniques such as chipping, grinding, sawing, abrading, drilling, or extensive breaking.

2. Abatement project fees for regulated asbestos-containing materials (RACM) are calculated at 10 cents per linear, square, or cubic foot, with a minimum fee of \$25.00 and a maximum fee of \$1,000.00.

3. The Department shall not issue an abatement project license for a renovation or demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.

4. Fees shall not be refunded for projects for which the Department has issued an asbestos project license.

5. An abatement project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds.

**D. Demolition Project Fees.**

1. The Department shall charge a fee of \$50.00 to issue a project license for demolition projects.

2. A project license is required for every facility to be demolished, including any facility in which the required building survey indicates there is no ACM present.

3. The Department shall not issue a project license for a demolition until all requested information has been submitted and reviewed, and all applicable fees have been paid.

4. Fees shall not be refunded for projects for which the Department has issued a project license.

5. A project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds, and the licensee shall be subject to enforcement action for operation without a valid license.

## **SECTION IV. PERSONNEL LICENSING REQUIREMENTS.**

### **A. Applicability.**

1. No person or contractor shall engage in any asbestos project or abatement involving RACM, or ACM rendered regulated by removal techniques or methods, unless licensed to do so by the Department.

2. Every contractor, supervisor, worker, air sampler, project designer, building inspector, or management planner who engages in any asbestos project shall have a current and valid license specific to the duties performed under the license.

3. When a person or contractor engaged in an asbestos project performs duties in more than one discipline, a separate license shall be obtained specific for each discipline. However, a management planner may perform the duties of a building inspector, and a supervisor may perform the duties of a worker without having to obtain separate licenses.

4. A license in any discipline shall only be utilized in accordance with the conditions and provisions contained in the license.

5. When an individual or a company for hire plans to remove RACM, a Department-issued asbestos contractor license must be obtained prior to performing abatement.

### **B. Training Documentation.**

Acceptable documentation of training shall be:

1. An original certificate issued by a Department-approved training course provider and that meets the requirements specified in this regulation; or

2. A valid, original license or accreditation (photocopies or telephone facsimile transmissions shall not be accepted) issued by a state with which the Department has a reciprocal arrangement; or

3. A letter verifying successful completion of training, which includes the name, last four digits of Social Security number, unique certificate number, test score, and printed name and signature of the course instructor and which is sent directly to the Department from the training provider.

### **C. License Application.**

1. Each applicant seeking an asbestos personnel license in any discipline shall:

a. Successfully complete a Department-approved initial training course specific to the discipline and, at the conclusion of the course, pass an examination with a score of 70 percent or above;

b. Submit a completed application to the Department in a format designated by the Department;

c. Submit a color passport style photo or have a photo taken by the Department. Digital photos should be at least one mega pixel in resolution. Still photos should be a minimum of 2" x 2" and a maximum of 3" x 5".

2. The application must state the type of license for which the application is being made and must include all of the following information:

#### **a. Supervisor License:**

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial asbestos abatement five-day supervisor training course and all subsequent eight-hour refresher training courses, if applicable.

#### **b. AHERA Worker License:**

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial asbestos abatement four-day worker training course and all subsequent eight-hour refresher training courses, if applicable.

c. Air Sampler License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation;

(2) Documentation of successful completion of an initial asbestos abatement five-day-supervisor training course; and

(3) Documentation of successful completion of NIOSH 582 course or equivalent, or documentation that the applicant is a Certified Industrial Hygienist.

d. Project Designer License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos abatement project designer training course and all subsequent eight-hour refresher training courses.

e. Building Inspector License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos building inspector training course and all subsequent four-hour refresher training courses, if applicable.

f. Management Planner License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos building inspector training course and all subsequent four-hour refresher training courses, if applicable; and

(3) Documentation of successful completion of an initial two-day asbestos management planners' training course and all subsequent four-hour refresher training courses, if applicable.

g. Contractor's License:

(1) Company name, mailing address, street address, telephone number, name, and title of a responsible company official, registered agent with the South Carolina Secretary of State's office, and the Federal Employer Identification Number (FEIN); and

(2) The name and license number of a company employee who is currently licensed as a supervisor in affiliation with that company pursuant to this regulation, or an application completed as required herein for a supervisor's license for a company employee.

h. Non-Industrial Facility O&M Group License (this license is facility-affiliated only):

(1) The facility representative shall, on company letterhead, submit the name, Social Security number, and type of training received for each individual to be covered under the facility license; and

(2) Documentation shall be submitted in the form of an original initial and/or refresher asbestos training certificate that is discipline-specific for the duties to be performed by each individual covered under the facility license.

D. Continuing Education.

1. After successful completion of an approved initial training course, an applicant seeking a license in any discipline except that of Contractor shall thereafter successfully complete a Department-approved initial or refresher training course specific to the discipline and, at the conclusion of each course, shall pass an examination with a score of 70 percent or above.

2. If more than 12 months but fewer than 24 months have elapsed since completing an initial or refresher training course, an applicant shall successfully complete either a refresher training course or an initial training course.

3. If more than 24 months have elapsed since successfully completing an initial or refresher training course, an applicant shall complete an initial training course.

4. The Department may require additional initial or refresher training specific to the requirements of this regulation or to air sampling strategies.

E. Action on an Application.

1. Within 15 calendar days after receiving an application, the Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 30 calendar days after receiving a completed application, including all additional information requested, the Department will issue a license or deny the application.

2. The Department reserves the right to request documentation to verify an applicant's previous training or accreditation in any discipline prior to issuing a license.

3. The Department reserves the right to request documentation, including Social Security numbers, to verify an applicant's identity prior to issuing a license.

F. Denial.

1. The Department shall deny an application if it determines that the applicant has not demonstrated the ability to comply with applicable requirements, procedures, and standards established by:

a. The Department as per South Carolina Regulation 61-86.1;

b. Chapter 87 of the 1976 South Carolina Code of Laws, as amended;

c. The U. S. Environmental Protection Agency as per:

(1) National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions; and

(2) Asbestos-Containing Materials in Schools, 40 CFR Part 763, Subpart E, as amended, and any subsequent amendments and editions; and

d. Occupational Safety and Health Administration in 29 CFR Part 1926.1101 and 1910.1001, as amended, and any subsequent amendments and editions.

2. The Department shall deny a license to any applicant who has failed to comply with the requirements of a properly issued consent, administrative, or judicial order initiated by the Department.

3. The Department shall deny a license to any applicant if it determines that any information or documentation, including a Social Security number, required by this regulation is fraudulent or has been altered or falsified.

4. The Department shall deny a license to any applicant who fails to remit applicable fees.

5. The Department shall deny a license to any applicant who submits fraudulent or falsified information or documents.

6. The Department will not return fees submitted with any invalid or falsified training and/or identification documents submitted for the purposes of licensing.

7. The Department shall send notification of the denial of an application by certified mail, unless the individual is present when the application is evaluated, in which case the Department will inform the applicant in person of the denial.

8. Reapplication after denial. An application denied per this Section shall be resubmitted as follows:

a. For failure to comply with the requirements of a properly issued consent, administrative, or judicial order initiated by the Department, the application shall not be considered until the applicant complies with said order.

b. For altered or falsified documents, including but not limited to, training certificates, Social Security cards or numbers, and photo IDs, the application shall not be considered by the Department prior to 180 days after receipt of such documents and will only be considered thereafter with proper proof of the applicant having successfully completed an initial course in the discipline in which licensure is sought.

c. For failure to remit applicable fees, the application shall not be considered until all applicable fees have been received.

9. The applicant may request a hearing pursuant to the provisions of this regulation.

G. Conditions and Generic Alternatives.

In granting a license, the Department may impose reasonable terms and conditions to ensure continuous compliance with the requirements of this regulation.

H. Duration of Licenses.

1. A license shall automatically become invalid if an instrument of payment is returned for insufficient funds.

2. A Contractor's license shall expire one year from the issue date, unless the Department suspends or revokes the license at an earlier date. A Contractor's license shall be considered invalid unless at least one company employee maintains a current, company-affiliated supervisor's license pursuant to this regulation.

3. All other licenses shall expire one year from the examination date printed on the license, which is based on the most recent acceptable training certificate submitted with the application, unless the Department suspends or revokes the license at an earlier date.

4. No license shall be extended beyond its expiration date.

## **SECTION V. ASBESTOS PROJECTS/GENERAL INFORMATION.**

A. Applicability.

The requirements of this Section shall apply to the owner/operator, building inspector, management planner, project designer, air sampler, supervisor, worker, non-industrial facility owner/operator, or demolition contractor of any asbestos project involving the disturbance of RACM or ACM.

B. General Requirements.

1. A person licensed as an asbestos project designer shall prepare the written design for each abatement renovation project involving the removal of greater than 3,000 square, 1,500 linear or 656 cubic feet of RACM in a facility. However, all projects must be designed in accordance with 40 CFR 763.90(g) (*Federal Register*, Volume 52, Number 210, Friday, October 30, 1987), as amended, and any subsequent amendments and editions, and this regulation.

2. The asbestos project design must address:

- a. Preparation of each asbestos-related work area;
- b. Establishment of each containment;
- c. Establishment of each decontamination unit and procedures for use;
- d. Evaluation and selection of various fiber release control options;
- e. Establishment, maintenance, and monitoring of negative air pressure within each containment;
- f. RACM enclosure, removal, encapsulation, or repair work practices;
- g. Visual inspection procedures for each asbestos abatement containment area;
- h. Clean-up and final clearance procedures;
- i. Air monitoring, including analysis, documentation, and any other required record keeping;
- j. Respiratory protection and personal protective equipment requirements;
- k. Procedures for on-site storage, handling, and disposal of ACM and project waste; and
- l. Procedures for maintaining personnel licenses and training certificates on-site.

3. An owner/operator shall obtain an asbestos project license from the Department prior to beginning any NESHAP, small, minor, or demolition asbestos project subject to this regulation unless reporting quarterly as specified herein or in the case of an emergency removal.

4. When air monitoring is required by this regulation, the facility owner shall utilize a person licensed as an air sampler and ensure that all air monitoring is performed.

5. When any negative pressure enclosure or contained work area is required for any sized asbestos abatement project or demolition project, the following requirements shall apply:

- a. There shall be sufficient negative pressure differential equipment to ensure at least four air changes per hour;
- b. A minimum of -0.02 column inches of water pressure differential, relative to outside pressure, shall be maintained as verified and recorded by a manometer;
- c. The manometer record of daily readings (to be taken four times during every eight-hour work shift by a licensed air sampler independent from the contractor) verifying the negative pressure shall be maintained at the job site for Department review for the duration of the project;
- d. The inlet sensor of the manometer shall be located at the farthest point from any source of make-up air;
- e. The manometer must be calibrated prior to the start of each work shift;
- f. Negative pressure shall be maintained until final clearance has been achieved; and
- g. Air movement shall be directed away from employees performing asbestos work within the enclosure/containment and toward a HEPA filtration or other collection device.

6. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible, but not later than, the following working day when a project has been canceled.

7. The disposal requirements of this regulation shall be applicable to all asbestos-containing and asbestos-contaminated materials for any abatement activity.

8. The owner/operator shall ensure that contaminated water is filtered through a five-micron or smaller filter and discharged to a sanitary sewer system. No contaminated or filtered water shall be allowed to leak or drain outside of the work area.

C. Other Requirements at the Project Sites.

1. Every asbestos abatement entity performing abatement work shall have at the project site a legible, clear copy of a valid current initial or refresher training certificate issued by an approved training provider.

2. Every asbestos abatement entity performing abatement work shall have a clear, legible copy of a valid Department-issued personnel license at the project site.

3. For the duration of an abatement project, the asbestos owner/operator shall ensure that:

- a. Each worker and supervisor employed at the abatement project site meets the applicable training and licensing requirements of this regulation.
- b. At all times while abatement (including preparation, removal, and cleanup) of RACM is being performed at NESHAP and small projects, at least one licensed supervisor remains inside of each contained work area supervising the work. During abatement at regulated roofing projects, the supervisor shall be in the immediate work area supervising the work.
- c. A means is available at all times during abatement at NESHAP and small abatement projects for Department inspectors or other authorized visitors to communicate with persons within the immediate contained work area in order to gain access.

d. For the duration of the asbestos project, a daily log containing the name and signature of every individual entering the negative pressure enclosure/regulated area shall be maintained on site.

e. The contained work area is secured at all times to prevent access of unauthorized visitors or unprotected persons.

f. Legible copies of Department letters of approval for alternative work practices are at the project site and available for inspection for the duration of abatement.

4. The contractor shall not proceed with abatement unless the air sampler fulfills all specified air monitoring requirements.

5. Commercial labor providers shall ensure that each worker or supervisor has completed appropriate training as specified in this regulation.

D. Alternative Work Practices for Any Sized Asbestos Project.

1. The Department may, on a case-by-case basis, approve and issue a variance for an alternative procedure for control of emissions from an asbestos abatement project, provided the owner/operator submits a written description of the alternative procedure to the Department prior to beginning work and demonstrates to the satisfaction of the Department that compliance with the prescribed procedures will not be practical or feasible, and that the proposed alternative procedures provide equivalent protection from asbestos exposure.

2. The owner/operator shall keep a copy of the Department's written approval at the work site and make it available for review by Department personnel upon request.

**E. Emergency Operation.**

1. For an emergency operation, the owner/operator must notify the Department by telephone (outside of normal business hours, an electronically recorded verbal notification is acceptable for approval to execute the emergency operation) and must submit a project notification/application as early as possible before, but not later than, the working day following the emergency operation. The notification/application may be transmitted via facsimile.

2. The facility owner shall notify the Department in writing of the date and hour that the emergency occurred; a description of the sudden, unexpected event; and an explanation of how the event caused an unsafe condition, public safety or health threat, equipment damage or would impose an unreasonable financial burden. The owner shall submit this information with the project notification/application.

**SECTION VI. ASBESTOS BUILDING INSPECTION REQUIREMENTS.**

**A. Applicability.**

1. Prior to beginning a renovation or demolition operation at any facility, the facility owner and/or owner's representative shall ensure that an asbestos building inspection is performed to identify the presence of ACM.

2. The asbestos building inspection shall include the facility or part of the facility affected by the renovation or demolition operation.

3. The facility owner and/or owner's representative shall ensure the asbestos building inspection is completed by a person licensed as an asbestos building inspector or management planner.

4. When materials that will be disturbed by the renovation or demolition operation are assumed to be asbestos without the use of laboratory bulk sample results, the provisions of Section VI.A.3 of this regulation does not apply.

5. In a multi-unit building, each separate room in each part of the building or areas affected by the renovation or demolition operation shall be inspected to confirm and quantify ACM homogeneous areas for sampling purposes.

6. To be acceptable, a building inspection shall have been performed no earlier than three years prior to the renovation or demolition, or, if more than three years have elapsed since the most recent inspection, the previous inspection shall be confirmed and verified by a person licensed as a building inspector.

7. The Department will not accept an asbestos building inspection or written report for any structure from an employee of an abatement company also involved in the removal of asbestos-containing materials from that structure, unless the licensed inspector is an employee of an entity regulated under Section XX of this regulation.

8. An asbestos building inspector shall not participate in the analysis of the bulk samples he or she has collected.

**B. Asbestos Inspection.**

The building inspector or management planner shall:

1. Visually inspect the areas that may be affected by the renovation or demolition operation to identify the locations of all suspected ACM. For a pre-demolition inspection, destructive sampling techniques shall be utilized;

2. Touch all suspected ACM to determine condition, friability, and whether ACM is a regulated material in areas that may be affected by the renovation or demolition operation;

3. Identify all homogeneous areas of suspected ACM in areas that may be affected by the renovation or demolition operation;

4. In areas that may be affected by the renovation or demolition operation, assume that some or all of the homogeneous areas are ACM, and/or for each homogeneous area that is not assumed to be ACM, collect and submit bulk samples for analysis in compliance with this Section;

5. Material Safety Data Sheets (MSDS), statements from the manufacturer, and architecture signoff will not be accepted as proof that a building product contains no asbestos, except in cases where the owner can verify the direct correlation of the building product to the MSDS, statements from the manufacturer, and/or architecture signoff documents. The Department reserves the right to reject documentation that it deems unacceptable.

C. Asbestos Inspection Report Contents.

1. Prior to each demolition operation and upon request for renovations, the Department shall be provided with a complete, legible copy of the asbestos building inspection report.

2. The inspection report shall include:

a. A title page denoting:

(1) The client's name, company, address, and telephone number, and the name and exact location of the facility inspected;

(2) The date the inspection was performed;

(3) The date the inspection report was written; and

(4) The printed name and telephone number of the inspector(s), and his or her affiliated company name, address, and telephone number.

b. A cover letter to the building owner or owner's representative that describes the purpose of the inspection; a general synopsis of the inspection and results; and the name, title, and signature of the inspector(s) and report writer, if different.

c. A detailed narrative of the physical description of the building or part of the building affected by the renovation or demolition operation that includes:

(1) The square footage of the building or part of the building affected by the renovation or demolition operation;

(2) The building materials used in the construction of the exterior, roof, interior, and basement or crawlspace of the building affected by the demolition or affected by the renovation materials operation; and

(3) An estimated or exact quantity (square or linear feet) for all suspect materials whether sampled for or assumed to be asbestos that may be affected by the renovation or demolition operation;

(4) Also include a description of non-suspect materials excluding: glass, metals, kiln brick, cement, fiberglass, concrete, pressed wood, cinder block, and rubber.

d. An executive summary that details:

(1) The type of suspect ACM (e.g., TSI, floor tile, mastic), total square or linear footage, and the total number of samples collected for each separate homogenous area affected by the renovation or demolition operation;

(2) The date of the inspection, type, condition, quantity, sample results, and exact location of ACM positively identified or assumed to be ACM in the part of the building affected by the renovation or demolition operation; and

(3) A list of the homogeneous areas identified are:

(a) Surfacing material that includes, but is not limited to, joint compound; plaster; and painted, troweled on, or spray-applied textured material;

(b) Thermal system insulation (TSI) that includes, but is not limited to, pipe and boiler insulation; or

(c) Miscellaneous material that includes, but is not limited to, flooring, roofing, mastics, gaskets, cementitious materials, caulking, ceiling tiles, fire doors, wall boards, and flexible duct connections;

(4) Whether the material is accessible for the building or part of the building affected by the renovation or demolition operation; and

(5) The material's potential for disturbance for the building or part of the building affected by the renovation or demolition operation.

e. For renovation and demolition operations, the inspector's determination that ACM is friable or non-friable.

f. Except when suspect ACM materials are assumed to be asbestos, include a complete, clear, legible copy of all laboratory bulk sample results.

g. Clear, legible drawings and/or photographs to clarify the scope of the renovation or demolition operation. Illustrate the exact location of each sample collected. For facilities that involve a trade secret or confidential component or an affected area process, a request for a variance may be submitted.

h. The printed name and signature of each accredited inspector who collected the samples, and a clear legible copy of his or her Department issued asbestos building inspector or management planner license.

#### D. Sampling.

1. A licensed asbestos inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing that is not assumed to be ACM, and shall collect the samples as follows:

a. At least three bulk samples shall be collected from each homogeneous area that is 1,000 or fewer square feet (sf) or linear feet (Lf) in size.

b. At least five bulk samples shall be collected from each homogeneous area that is greater than 1,000 but fewer than or equal to 5,000 sf or Lf.

c. At least seven bulk samples shall be collected from each homogeneous area that is greater than 5,000 sf or Lf.

2. A licensed asbestos inspector shall collect, in a statistically random manner, at least three bulk samples from each homogeneous area of TSI and any miscellaneous material that is not assumed to be ACM. In accordance with ASTM E2356, and any subsequent amendments and editions, negative results for non-friable organically bound materials such as flooring and roofing shall be verified with at least one TEM analysis.

3. Each owner/operator shall have all bulk samples collected per this regulation analyzed for asbestos using laboratories accredited by the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP), or an equivalent standard as approved by the Department.

4. Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" found in Appendix E to subpart E of 40 CFR 763, the "Method for the Determination of Asbestos in Bulk Building Materials" (EPA/600/R-93/116), ASTM E2356, or other method(s) deemed acceptable by the Department on a case-by-case basis.

5. A homogeneous area is not considered to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of one percent (1%) or less.

6. A homogeneous area shall be determined to contain ACM based on a finding that the results of at least one sample collected from that area shows that asbestos is present in an amount greater than one percent (1%).

## **SECTION VII. STANDARDS FOR AIR SAMPLERS.**

### **A. Applicability.**

This Section shall apply to each owner, owner's representative and/or air sampler engaged in an asbestos project where air sampling is required.

B. General Requirements.

1. Area air sampling shall be performed by a licensed air sampler.
2. Abatement air sampling data collected by a licensed air sampler under contract with or employed by the asbestos contractor performing the abatement will not be acceptable to the Department.
3. Air sampling shall be conducted using collection media, procedures, and analytical methods in accordance with NIOSH Method 7400 when Phase Contrast Microscopy (PCM) is used, and with *Electron Microscope Measurement of Airborne Asbestos Concentrations* [EPA Report 600/2-77-178 (1978) and EPA Contract No. 68-02-3266 (1984)] when Transmission Electron Microscopy (TEM) is used.
4. Any alternative procedure for clearance sampling shall require prior written approval from the Department. The written request must provide a detailed description of the alternative procedure and an explanation of how it will provide an equivalent level of protection to facility occupants.
5. The air sampler shall:
  - a. Ensure that all air sampling pumps are accurately calibrated prior to operation by utilizing a rotometer that has been calibrated within the past six months using a primary standard, such as a bubble burette or a dry calibrator. Calibration data shall be maintained at the project site for the duration of abatement.
  - b. Ensure that all air sampling pumps are operating properly and that the filtered sampling cassettes are securely attached to the pumps for the duration of sampling.
  - c. Maintain current background, daily, and clearance air monitoring data at the project site, and make the data available for review by Department personnel and other authorized visitors upon request.
  - d. Ensure that there are always at least four sampling pumps operating properly for the duration of any asbestos project requiring daily area air monitoring.
  - e. Collect area air samples for a minimum of two and one half hours for each four-hour work period during preparation, removal, and clean-up activities at NESHAP projects.
  - f. Maintain a log for the duration of an asbestos project describing daily activities.
  - g. Follow the procedures specified in NIOSH 7400 or an equivalent method acceptable to the Department when conducting clearance air monitoring.
  - h. Submit a written copy of the sampling procedures and clearance air monitoring results to the facility owner within five working days following the completion of the project and to the Department upon request.

C. Background Monitoring.

1. The air sampler shall collect a minimum of five air samples at a NESHAP abatement project prior to the start of abatement activities in order to obtain an index of background airborne fiber concentrations.
2. Samples shall be taken both inside and outside the work area to establish existing ambient air levels under normal activity conditions.
3. The air sampler shall document any variations and justifications for the variations, and shall maintain a written copy of the sampling variation(s) at the project site for the duration of the abatement, and shall provide the information to the Department upon request.
4. No background air sampling is required at small, minor, and O&M abatement projects.
5. Background sampling, when required, may be analyzed using PCM methods.

D. Daily Monitoring.

1. Once abatement activities begin at a NESHAP abatement project, the air sampler shall conduct representative daily area sampling in the following areas:
  - a. In the equipment room of the decontamination enclosure systems;
  - b. At the entrance to the clean room of each decontamination enclosure system;
  - c. Outside the work area in uncontaminated areas of the facility;

d. Where the negative pressure differential equipment exhausts, at a distance no greater than five to eight feet from the air flow when feasible. When multiple machines are in operation, the air sampler may rotate the sampling; however, all exhausts must be monitored daily; and

e. The total volume of air collected for daily area air sampling shall be in accordance with 40 CFR Part 763 and/or NIOSH 7400 and any subsequent revisions for analytical methodology.

2. The air sampler shall document any variations and justifications for the variations, and shall maintain a written copy of the sampling variation at the project site for the duration of the abatement and provide the information to the Department upon request.

3. Daily air sampling, when required, may be analyzed using PCM methods.

E. Clearance Monitoring.

1. Where clearance air monitoring is required by this regulation, the clearance standard for any NESHAP abatement project shall be: by Phase Contrast Microscopy less than or equal to 0.01 f/cc; or by Transmission Electron Microscopy (TEM). The clearance standard is less than or equal to 70 s/mm<sup>2</sup> using the Mandatory TEM Method described in 40 CFR 763, Appendix A of Subpart E, as amended, and any subsequent amendments and editions. The Z test with a value of Z less than or equal to 1.65 for a Z test carried out as described in 40 CFR 763, Appendix A of Subpart E, as amended, and any subsequent amendments and editions, shall be allowed for clearance purposes only with prior Department approval.

2. The total volume of air collected for clearance air sampling shall be in accordance with 40 CFR Part 763 and/or NIOSH 7400 and any subsequent revisions for analytical methodology.

3. A licensed air sampler shall conduct, at a minimum, PCM clearance air monitoring at the completion of each NESHAP project. Projects exceeding the project design threshold (3,000 sf, 1,500 Lf, and 656 cubic feet of RACM) will require TEM clearance air monitoring.

4. When conducting clearance air monitoring, the air sampler shall follow the procedures specified in *Measuring Airborne Asbestos Following An Abatement Action*, EPA Report 600/4-85-049 (1985), which is hereby incorporated by reference, or an equivalent method acceptable to the Department. Procedures shall be summarized and submitted to the facility owner. The air sampler shall report the clearance air monitoring results in writing to the facility owner within five working days following completion of the project and to the Department upon request.

5. Sampling shall not begin until wet cleaning has been completed and no visible pools of water or condensation remain. Sufficient time shall be allowed for all surfaces to dry. The sampling zone shall be representative of the building occupants' breathing zone.

6. Sampling shall not begin until the air sampler has performed a visual inspection and authorizes final clearance air monitoring.

7. Sampling shall be conducted only after all interior wall, ceiling, and floor polyethylene sheeting has been removed. Critical barriers and the five-stage decontamination enclosure system shall remain in place until the abated area has passed final clearance.

8. For projects subject to 40 CFR Part 763, AHERA, as amended, and any subsequent amendments or editions, conduct clearance air monitoring after abatement in areas to be reoccupied (including interior spaces, porticos, and covered exterior walkways) and abatement on exterior portions of mechanical systems used to condition interior spaces. For projects equal to or greater than 160 sf, 260 Lf or 35 cubic feet, TEM clearance air monitoring is required.

9. At least one licensed asbestos project supervisor shall remain at an asbestos project site for the duration of the final clearance visual inspection and clearance air sample collection process.

## **SECTION VIII. DISPOSAL REQUIREMENTS.**

A. Applicability.

This Section shall apply to each owner/operator engaged in a renovation abatement project.

B. General Requirements.

1. Each owner/operator engaged in a renovation abatement project subject to this Section shall ensure that:

- a. Each container (bag, drum, wrapped component, etc.) is labeled so that labels have the appearance of or are designed in accordance with OSHA 29 CFR 1926.1101 (August 10, 1994), as amended, and any subsequent amendments and editions, and EPA 40 CFR 61.150 (November 20, 1990), as amended, and any subsequent amendments and editions.
- b. All asbestos waste bags and/or containers shall be properly labeled prior to being placed into the waste transport vehicle.
- c. Waste generator labels are:
  - (1) Written legibly and in indelible ink; and
  - (2) Displayed in a prominent location on the outer most bag or container.
- d. Asbestos waste is disposed of at a landfill approved or permitted to accept asbestos waste.
- e. Asbestos waste is not stored at a location other than the facility site without prior written approval from the Department.
- f. Stored asbestos waste is maintained in a secured, locked location where access is controlled.
- g. Asbestos waste is transported and disposed of in a manner that will not permit the release of asbestos fibers into the air (e.g., enclosed or retrofitted covered vehicle).
- h. Asbestos waste is transported in accordance with the following procedures:
  - (1) The cargo area of the transport vehicle shall be free of debris and be lined with at least one layer of 6-mil polyethylene sheeting.
    - (a) Floor sheeting shall be installed first and shall extend up the side walls at least 12 inches and shall be taped securely into place.
    - (b) Wall sheeting shall overlap by at least six inches and be taped into place.
    - (c) Ceiling sheeting shall extend down the sides of the walls at least six inches and be taped into place.
  - (2) If asbestos waste is transported exclusively in leak-tight clean drums, or other leak-tight, rigid containers approved by the US Department of Transportation as appropriate shipping containers for asbestos waste, then polyethylene sheeting is not required.
  - (3) Drums, bags, wrapped components, and other leak-tight containers that have been removed from the work area shall be labeled in accordance with 1.a. of this Section prior to being loaded into an appropriate vehicle for transportation.
  - (4) Any debris or residue observed on containers or surfaces outside of the work area resulting from abatement activities shall immediately be cleaned using wet methods and a vacuum equipped with a HEPA filter.
  - (5) Containers shall be carefully placed, not thrown, into the truck cargo area. Drums shall be placed on a level surface in the cargo area and packed tightly or blocked and braced to prevent shifting and tipping. Large structural components shall be secured to prevent shifting.
  - (6) Asbestos waste that is removed from a facility site shall be transported directly to an approved landfill unless it is stored in the location designated in a temporary storage license issued to the owner/operator by the Department.
  - (7) Metal dumpsters or containers in which asbestos waste is temporarily stored at the abatement site shall be lined with 6-mil polyethylene sheeting to prevent contamination and shall have doors or tops. The doors and tops shall be closed and locked except during loading or unloading of asbestos waste.
  - (8) Metal dumpsters or containers used for waste storage shall be labeled in accordance with OSHA 29 CFR 1926.1101, August 10, 1994, as amended, and any subsequent amendments and editions.
  - (9) Bags shall be free of splits, rips, and tears, and shall be carefully placed, not thrown, into the transport vehicle.
  - (10) Any equipment, materials, or supplies stored in the waste transport vehicle shall be isolated from the asbestos waste by a leak-tight barrier. All containers and wrappings shall be free of asbestos contamination.

(11) Non-asbestos waste shall not be placed in waste containers or bags labeled as asbestos waste.

(12) The vehicle used to transport asbestos wastes shall be labeled in accordance with 40 CFR 61.149(d)(1)(i), (ii), and (iii), as amended, and any subsequent amendments and editions.

2. The owner/operator shall dispose of asbestos waste in accordance with the following procedures:

a. Upon reaching the landfill, vehicles shall approach the dump location as closely as possible to unload asbestos waste.

b. Bags, drums, and wrapped components shall be inspected when unloaded at the disposal site. Material in damaged containers shall be rewrapped or repacked in empty drums or bags.

c. Waste containers shall be placed on the ground at the disposal site, not dropped or thrown out.

d. Unloading of metal dumpsters or containers by tipping or tilting is permitted without re-inspecting individual bags or drums, provided there are no visible emissions.

e. Following the removal of all containerized waste, polyethylene sheeting shall be removed and discarded in bags or drums along with contaminated cleaning materials and protective clothing.

f. After asbestos waste has been unloaded, the truck cargo area, including the floor, walls, and ceiling, shall be decontaminated using wet methods or a vacuum equipped with a HEPA filter until no visible residues remain.

g. A copy of a completed waste shipment record with signature of the landfill operator shall be submitted to the Department by the asbestos contractor within 45 working days of completion of removal.

h. A waste shipment record shall be used and shall include the asbestos project license number; names of the facility owner, contractor and disposal site; the estimated quantity of asbestos waste; and the type and number of containers used. Each time the material changes custody, the record shall be signed by the person(s) receiving the waste. If a separate hauler is used, the hauler's name, address, telephone number, and the driver's signature shall also appear on the record.

i. The owner/operator shall ensure that asbestos-containing or asbestos-contaminated waste materials are not burned or recycled.

j. Commercial rental vehicles shall not be used to transport any asbestos, asbestos-containing, or asbestos-contaminated waste. This prohibition does not apply to tractors but does apply to cargo compartment areas used to store and/or transport asbestos waste. Rental vehicles do not include leased vehicles.

C. Temporary Asbestos Storage Containment Area Site.

1. Prior written approval must be obtained from the Department before a site other than an asbestos abatement project site can be used for the storage of regulated asbestos-containing waste from small, minor, or O&M asbestos projects. NESHAP asbestos project waste must be deposited into an approved landfill and may not be stored.

2. Written authorization shall also be obtained from the facility owner or his representative prior to transporting regulated asbestos-containing waste from the facility site of generation (verification of the property owner's authorization must be sent directly to the Department by the facility owner).

3. In order to have a site permitted as a Temporary Asbestos Storage Containment Area, the operator must demonstrate that adequate precautions have been and will continue to be taken to ensure that the waste is properly maintained for the duration of its storage.

4. An operator must submit an application requesting a license for a Temporary Asbestos Storage Containment Area to the Department for review at least 45 working days in advance. The Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application.

5. Within 45 working days after receiving a completed application, including additional information requested, the Department will issue a license or deny issuance of the license.

6. The Department reserves the right to inspect the proposed Temporary Asbestos Storage Containment Area prior to granting final approval.

7. Approval of the Temporary Asbestos Storage Containment Area will be valid for one year from the date of issuance unless the authorization is revoked or suspended by the Department at an earlier date.

8. The Department may revoke or suspend a license based on falsification of or known omission of information from an application for this license, omission or improper use of work practices, improper disposal of ACM, and/or spread of asbestos waste beyond the containment area.

9. In order to renew a storage license, the operator of a Temporary Asbestos Storage Containment Area must resubmit an application for off-site storage of regulated asbestos-containing waste to the Department at least 45 working days prior to the expiration of the existing permit. Previous approval of a site as a Temporary Asbestos Storage Containment Area does not guarantee re-issuance or continuance of a storage license.

## **SECTION IX. EXEMPTION FROM WETTING FOR ANY SIZED PROJECT.**

### **A. General Provisions.**

In renovation operations, wetting is not required if:

1. The owner/operator has obtained prior written approval from the Department based on a written application that wetting to comply with this Section would unavoidably damage equipment or present a safety hazard; and

2. The owner/operator uses one or more of the following emission control methods:

a. A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of asbestos materials. The system must exhibit no visible emissions to the outside air or must be designed and operated in accordance with the requirements in EPA Regulation 40 CFR 61.152, as amended, and any subsequent amendments and editions;

b. A glovebag system designed and operated in accordance with the requirements of OSHA regulation 29 CFR 1926.1101, as amended, and any subsequent amendments and editions;

c. Leak-tight wrapping to contain all RACM prior to dismantlement;

3. In renovation operations where wetting would result in equipment damage or a safety hazard and the methods allowed in this Section cannot be used, an owner or operator may use another method after obtaining written approval from the Department based on its determination that the alternative method is equivalent to wetting. The owner/operator shall keep a copy of the Department's written approval at the work site and make it available for review by Department personnel upon request.

### **B. Temperature Constraints.**

When the temperature at the point of wetting is below 0° C (32° F):

1. During periods when wetting operations are suspended due to freezing temperatures, the owner/operator must record the temperature in the area containing the asbestos-coated or covered facility components at the beginning, middle, and end of each workday and keep daily temperature records. A copy of these records must be maintained at the project site and made available for inspection by Department personnel upon request. The facility owner must maintain these temperature records for two years from the date the project is completed and shall provide a legible copy of the data to the Department upon request.

2. The owner/operator may request to use an alternative work practice by submitting to the Department a written description of control measures to be used that will afford the same level of protection as wetting. A legible copy of the Department's approval letter must be available at the project site for the duration of the asbestos project and shall be made available for review by Department personnel upon request.

3. The owner/operator shall remove facility components containing, coated with, or covered with RACM as units or in sections and shall secure the units or sections leak-tight in 6-mil or thicker polyethylene sheeting.

## **SECTION X. NESHA PROJECTS.**

### **A. Applicability.**

The notification/application, work practice, air sampling, clean-up and disposal requirements of this Section shall apply to each owner/operator of a renovation asbestos project, where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed includes at least 260 linear feet on pipes, or 160 square feet on other facility components, or 35 cubic feet off of facility components where the area or length could not be measured prior to abatement.

### **B. Notification/Application.**

1. Each owner/operator of a renovation or demolition operation to which this Section applies shall:

a. Provide the Department with written notification/application at least ten complete working days prior to any renovation or demolition operation, and pay all applicable project fees. Acceptable delivery of the notification and fee payment is by U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

b. Update/revise the notification/application and pay appropriate fees as required when any previously-notified information changes, including but not limited to, when the amount of asbestos affected increases or decreases more than five percent (5%), when the project start or completion date changes, when the disposal site changes, and/or the project has been cancelled. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day.

c. Prior to each demolition operation, and upon request for renovations, provide the Department with a complete legible copy of the asbestos building inspection report.

d. Begin abatement on the start date contained in the Department-issued asbestos project license.

e. Project designs shall be submitted at the Department's request.

2. When the asbestos stripping or removal operation or demolition operation covered by this Section will begin on a date earlier than the previously-notified start date, the owner/operator shall provide the Department with written notification/application of the new start date at least ten working days before asbestos stripping or removal work will begin. The Department may waive this requirement on a case-by-case basis, although the owner/operator shall provide all required information in writing prior to commencing any abatement activities.

3. The owner/operator of an asbestos stripping or removal operation covered by this Section shall:

a. Notify the Department of the new start date by telephone as soon as possible before, but not later than, the original start date, when the renovation will begin after the date contained in the initial notification/application and in the asbestos project license issued by the Department.

b. Provide the Department with an updated written notice of the new start date as soon as possible before, but not later than, the original start date. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

c. Provide the Department with an updated written notice of the new completion date as soon as possible before, but not later than, one working day following the completion of the project when the asbestos stripping or removal operation covered by this Section will end on a date earlier than contained in the initial notification and in the asbestos project license issued by the Department. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

d. Provide the Department with written notification/application of the new completion date as soon as possible before, but not later than, the original completion date when the asbestos stripping or removal operation covered by this Section will end on a date later than contained in the initial notification/application and in the asbestos project license issued by the Department. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

4. The written notification /application shall include:

- a. Indication whether the notification/application is an original, revision, or cancellation;
- b. Name, address, and telephone number of the owner/operator;
- c. Type of operation: demolition or renovation;
- d. Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;
- e. Description of the procedures and analytical methods used to detect the presence of ACM (regulated and non-regulated), date of inspection, and name, address, telephone number, and license number of the building inspector;
- f. An estimate of the approximate amount of RACM and Category II nonfriable ACM to be removed from the facility in terms of length of pipe in linear feet; surface area in square feet on other facility components, or volume in cubic feet, if already off facility components;
- g. Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;
- h. Scheduled starting and completion dates of asbestos renovation or demolition;
- i. Description of planned renovation or demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;
- j. Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;
- k. Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;
- l. Description of procedures to be followed in the event that unexpected RACM is found or Category I or II nonfriable ACM becomes regulated;
- m. Name, address, and telephone number of the waste transporter; and
- n. Printed name and signature of the asbestos owner/operator submitting the notification, and date signed.

5. A complete notification/application shall contain all of the above information and shall be reported on a form similar to the one found in 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions.

C. Work Practice Requirements.

1. Preparation.

a. Prior to beginning removal, each owner/operator engaged in a renovation project subject to this Section shall:

(1) Define the work area using barrier tape and danger signs in accordance with the following or OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, if more stringent:

(a) Warning signs and tape that clearly separate the regulated area shall be provided and displayed at each location where a regulated area is required to be established by this Section. Signs shall be posted at a distance from the regulated area such that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

(b) The warning signs required by this Section shall bear the following information:

DANGER  
ASBESTOS  
CANCER AND LUNG DISEASE HAZARD  
AUTHORIZED PERSONNEL ONLY

(2) Shut down, lock, and tag out all HVAC equipment in or passing through the work area. Seal each intake and exhaust opening and any seam in system components with two sheets of 6-mil polyethylene sheeting and tape.

(3) Detach and wet clean removable electrical, heating, and ventilating equipment and other items which may be connected to asbestos surfaces.

(4) Remove existing filters from the HVAC system and dispose of as asbestos-contaminated waste.

(5) Seal each opening between the work area and uncontaminated areas including windows, doorways, elevator openings, corridor entrances, drains, ducts, electrical outlets, grills, grates, diffusers, and skylights with a critical barrier consisting of at least two independent sheets of 6-mil or thicker polyethylene sheeting secured in place. These critical barriers must be maintained leak-tight for the duration of asbestos abatement.

(6) Thoroughly clean and remove all movable objects from the work area.

(7) Thoroughly clean, then cover and secure each non-movable object in the work area with at least one sheet of 4-mil or thicker polyethylene sheeting.

(8) Use polyethylene sheeting to isolate contaminated from uncontaminated areas, and ensure the sheeting is attached securely in place and properly maintained at all times.

(9) Prevent contamination of carpet with ACM, or dispose of the carpet as asbestos-contaminated waste.

(10) Cover floors not being abated with at least two layers of 6-mil or thicker polyethylene sheeting. Floor sheeting shall be installed first and shall extend at least 12 inches up the walls and be taped into place. No seams shall be located at wall/floor joints. Spray-applied polyethylene coating shall not be used.

(11) Cover walls and ceilings not being abated with at least one sheet of 4-mil or thicker polyethylene sheeting. Wall sheeting shall be installed to minimize joints and shall extend at least six inches beyond wall/floor joint and be taped into place. Ceiling sheeting shall extend at least 12 inches down the wall and be sized and taped into place. No seams shall be located at wall/ceiling or wall/wall joints.

(12) Construct a decontamination enclosure system adjoining the contained work area. The decontamination enclosure shall be built in a manner that will prevent track-out of RACM, and shall consist of: a clean room equipped with appropriate storage containers and adequate space for changing clothing; an air lock; a shower room containing hot and cold or warm running water controllable at the tap; and an equipment room suitable for storage of tools and equipment.

(13) Construct a clear viewing port measuring at least 24 inches by 24 inches in an external wall of the contained work area to allow unobstructed observation of abatement activities in the work area.

(14) Operate negative pressure differential equipment with HEPA filtration continuously from the time that barrier construction is completed through the time that acceptable final clearance air monitoring results are obtained.

(15) Utilize a manometer to measure negative pressure differential and operate it in accordance with the General Requirement Section of this regulation.

## 2. Removal.

Each owner/operator engaged in a renovation asbestos project subject to this Section shall ensure that:

a. Prior to removal, all RACM is thoroughly wet through to the substrate using amended water.

b. All RACM that has been stripped or removed in sections or units shall be:

(1) Thoroughly wet during stripping or removal and shall remain wet until disposed of in accordance with this regulation and 40 CFR 61.150, as amended, and any subsequent amendments and editions;

(2) Carefully lowered to the ground or floor, not dropped or thrown; and

(3) When removed or stripped at an elevation greater than 50 feet above ground level, transported to the ground via leak-tight chutes or containers.

- c. At no time shall an owner/operator allow RACM to accumulate or become dry.
- d. Structural components are thoroughly wet prior to wrapping in polyethylene sheeting for disposal.
- e. For facility components such as reactor vessels, large tanks, and steam generators (but not beams, which must be stripped), ACM is not required to be stripped if the following requirements are met:
  - (1) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging any of the ACM;
  - (2) The component is encased in leak-tight wrappings; and
  - (3) The leak-tight wrapping is labeled in accordance with EPA Regulation 40 CFR 61.149(d)(1)(i),(ii),and(iii), as amended, and any subsequent amendments and editions, during all loading, unloading, and storage operations.
- f. When double polyethylene bags of at least 6-mil thickness are used for waste, bags shall be leak-tight. Excess air shall be removed from bags prior to sealing using a vacuum equipped with a HEPA filtration system in accordance with OSHA regulation 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.
- g. ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers.
- h. Any person exiting or any equipment or machinery being removed from the contaminated work area shall be thoroughly decontaminated. If equipment or machinery is not or cannot be thoroughly decontaminated, it shall be sealed in leak-tight containers. No visible residue shall appear on the outside surface of the container.

### 3. Cleanup.

- a. Each owner/operator engaged in a renovation abatement project subject to this Section shall ensure that:
  - (1) Following abatement, a visual inspection of the abated substrate is performed.
  - (2) A coating of a compatible encapsulating agent is applied to porous surfaces that have been stripped and cleaned of ACM. The encapsulant must be allowed to thoroughly dry prior to additional cleaning or final air clearance.
  - (3) The air sampler or the owner's representative inspects the abated area prior to final clearance. If there is any evidence of contamination, the asbestos contractor shall perform additional wet cleaning and HEPA vacuuming.
  - (4) All polyethylene sheeting, except for critical barriers and the decontamination enclosure system, is removed and disposed of as asbestos-contaminated waste.
  - (5) With only the critical barriers and decontamination enclosure system left in place, the entire work area, including any duct work, is wet-cleaned and HEPA vacuumed until no visible residue remains.
  - (6) Areas exceeding clearance standards are re-cleaned by the contractor using wet methods and HEPA vacuuming. Re-cleaning, drying, and retesting shall be repeated until the satisfactory clearance standard is achieved.
  - (7) Following satisfactory clearance of the work area, remaining polyethylene critical barriers and decontamination enclosure systems are removed and disposed of as asbestos-contaminated waste.
  - (8) Portable decontamination trailers are cleaned and polyethylene sheeting disposed of as contaminated waste.
- b. Re-establishment of the work area shall only occur following completion of clean-up procedures and after clearance air monitoring has been performed and documented to the satisfaction of the air sampler or of the facility owner or his representative.
- c. Replacement materials shall only be installed following completion of abatement. This does not include outdoor projects subject to this regulation.

### 4. Disposal.

The disposal requirements of the Disposal Section of this regulation shall apply.

D. Air Sampling and Analysis Procedures.

The background, daily, and clearance air monitoring requirements of the Air Sampling Section of this regulation shall apply.

## **SECTION XI. SMALL PROJECTS.**

A. Applicability.

The notification/application, work practice, air sampling, clean-up, and disposal requirements of this Section shall apply to each abatement project where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is more than 25 but fewer than 260 linear feet on pipes, or more than 25 but fewer than 160 square feet on other facility components, or more than ten but fewer than 35 cubic feet of RACM off of facility components such that area or length could not be measured prior to abatement.

B. Notification/Application.

In a facility being renovated subject to this Section, the owner/operator shall provide the Department with written notification prior to any abatement and pay all applicable fees as follows:

1. Deliver the notification/application by U.S. Postal Service or commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.
2. Postmark or deliver the notice at least four working days before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM.
3. Update/revise the notification/application and pay appropriate fees as required, when any previously-notified information changes, including but not limited to: when the amount of asbestos affected increases or decreases more than ten percent (10%), when the project start or completion date changes, and/or when the disposal site changes, and/or the project has been cancelled. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day. When the amount of asbestos affected changes such that the total quantity being abated qualifies as a NESHAP project, prior approval must be granted by the Department for work to proceed.
4. The Department may waive the four working days prior notice requirement on a case-by-case basis.

C. Air Sampling and Analysis Procedures.

The facility owner shall ensure that air sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-up Requirements.

1. An owner/operator engaged in a small asbestos abatement project shall:
  - a. Construct critical barriers to prevent the potential release of asbestos fibers from within the work area;
  - b. Prevent contamination of carpet with ACM, or dispose of the carpet as asbestos-contaminated waste;
  - c. Thoroughly wet all RACM prior to removal and keep it wet until disposal;
  - d. Prevent track-out and leakage of RACM onto uncontaminated surfaces;
  - e. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;
  - f. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed, leak-tight containers;
  - g. Ensure that any person exiting or any equipment or machinery being removed from the contaminated work area is thoroughly decontaminated. If equipment or machinery is not thoroughly decontaminated, it shall be sealed in leak-tight containers. No visible residue shall appear on the outside surface of the container; and

h. Ensure porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings.

2. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

## **SECTION XII. MINOR PROJECTS.**

A. Applicability.

The notification, work practice, clean-up, and disposal requirements of this Section shall apply to each abatement project where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is equal to or fewer than 25 linear feet on pipes, or is equal to or fewer than 25 square feet on other facility components, or is equal to or fewer than 10 cubic feet of RACM off facility components where the area or the length or area could not be measured prior to abatement.

B. Notification/Application.

In a facility being abated subject to this Section:

1. The owner/operator shall provide the Department with a written application at least two working days prior to any abatement and pay all applicable fees as follows:

a. Acceptable delivery of the notification shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

b. Update/revise the notification/application and pay appropriate fees as required when any previously-notified information changes, including but not limited to: when the amount of asbestos affected increases or decreases more than ten percent (10%), when the project start or completion date changes, and/or when the disposal site changes, and/or the project has been cancelled; or

c. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day. When the amount of asbestos affected changes such that the total quantity being abated qualifies as a small or NESHAP project, prior approval must be granted by the Department for work to proceed.

2. Facility employees who do not meet the definition of a contractor as defined by this regulation, or a contractor who has obtained a temporary storage license may maintain a log of all minor abatements performed during a quarter, report them to the Department within 30 calendar days after the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

The facility owner shall ensure that air sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-up Requirements.

1. An owner/operator engaged in a minor asbestos abatement project shall:

a. Construct critical barriers to contain asbestos fibers released within the work area;

b. Wet all RACM prior to removal and during containerization for disposal in an approved landfill;

c. Prevent track-out and leakage of RACM onto uncontaminated surfaces;

d. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;

e. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers;

f. Ensure that any person exiting or any equipment or machinery being removed from the contaminated work area is thoroughly decontaminated. If equipment or machinery is not

thoroughly decontaminated, it shall be sealed in a leak-tight container. No visible residue shall appear on the outside surface of the container;

g. Ensure porous surfaces, that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings;

h. Containerize waste in appropriately labeled impermeable containers (6-mil polyethylene sheeting, bags, and/or fiber or metal drums), and store in an area that is secured and locked; and

i. Transport asbestos waste in a manner that does not release fibers into the air and dispose of at a landfill permitted to accept asbestos waste.

2. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

### **SECTION XIII. OPERATION AND MAINTENANCE ACTIVITIES.**

A. Applicability.

1. The notification/application, work practice, clean-up, and disposal requirements of this Section shall apply to the non-industrial facility owner/operator and the O&M personnel covered under the facility's group license.

2. Workers are limited to an activity in which the amount of RACM disturbed does not exceed that which can be contained in one glovebag or one 6-mil polyethylene bag measuring no greater than 60 inches in length and width.

B. Notification/Application.

In a facility being abated that is subject to this Section:

1. The non-industrial facility owner/operator shall provide the Department with written notification/application and pay all applicable fees as follows:

a. Acceptable delivery of the notification shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

b. Update the notification when any previously-notified information changes.

c. Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the original start date when a project for which notification was made has been canceled.

2. Alternately, facility employees who do not meet the definition of a contractor as defined by this regulation may maintain a log of all O&M activities performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

The facility owner shall ensure that sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-Up Requirements.

1. An owner/operator engaged in an operation and maintenance activity shall:

a. Construct critical barriers to prevent the potential release of asbestos fibers from within the work area;

b. Wet all RACM prior to removal and during containerization for disposal at an approved landfill;

c. Prevent track-out and leakage of RACM onto uncontaminated surfaces;

d. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;

- e. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers;
  - f. Containerize wetted waste in appropriately labeled impermeable containers (6-mil polyethylene sheeting, bags, and/or fiber or metal drums) and store in an area that is secured and locked;
  - g. Transport asbestos waste in a manner that does not release fibers into the air, and dispose of at a landfill permitted to accept asbestos waste.
2. Each owner/operator engaged in an O&M glovebag operation shall:
- a. Ensure that the glovebag procedure is being performed only by persons who have received training in the method and are licensed as workers or supervisors in accordance with the requirements of this regulation;
  - b. Ensure that the glovebag is constructed and utilized in accordance with the glovebag requirements of this regulation and OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions;
  - c. Isolate the work area to prevent access by unprotected persons;
  - d. Display danger signs in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, at all approaches to any asbestos abatement area;
  - e. Remove all polyethylene sheeting, tape, glovebags and other equipment, and inspect the area for visible residue following abatement;
  - f. Wet-clean the area using amended water and a HEPA vacuum after surfaces have been allowed to dry. The sequence of wet cleaning and vacuuming shall be repeated until no visible residue is observed in the work area; and
  - g. Ensure that porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings.

E. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

## **SECTION XIV. GLOVEBAG TECHNIQUE.**

A. Applicability.

- 1. The requirements of this Section shall apply to the owner/operator of any NESHAP, small, minor, or O&M abatement project when glovebag operations are implemented.
- 2. The owner/operator shall ensure that asbestos-containing waste from glovebag operations is wet at all times during abatement, storage, and transportation and is deposited in a landfill approved or permitted to accept asbestos waste.

B. Glovebag Operations.

Glovebag systems may be used to remove ACM from straight runs of piping, elbows, and other connections when performed in compliance with the provisions of this Section and OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

- 1. The owner/operator shall ensure that the glovebag is constructed and utilized in accordance with the following requirements:
  - a. The work area is isolated to prevent access by unprotected persons.
  - b. Danger signs are displayed at all approaches to any asbestos abatement area in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.
  - c. The glovebag procedure is performed only by persons who have received training in the method and are licensed as workers or supervisors in accordance with the requirements of this regulation.
  - d. At least two persons shall perform glovebag removal operations.
  - e. Each glovebag shall be made of 6-mil thick plastic and shall be seamless at the bottom.
  - f. Each glovebag used on elbows and other connections must be designed for that purpose and used without modifications.

g. Each glovebag shall be installed so that it completely covers the circumference of pipe or other structures where the work is to be performed.

h. Each glovebag shall be smoke-tested for leaks and any leaks sealed prior to use.

i. A glovebag shall be used only once and may not be slid or moved.

j. Each glovebag shall not be used on surfaces whose temperature exceeds 150 degrees Fahrenheit.

k. Prior to disposal, each glovebag shall be collapsed by removing air within it using a HEPA vacuum.

l. Before beginning the operation, loose and friable material adjacent to the glovebag or glovebox operation shall be wrapped and sealed in at least two layers of 6-mil polyethylene.

m. Where a system uses an attached waste bag, such bag shall be connected to the collection bag using a hose or other material that shall withstand the pressure of ACM waste and water without losing its integrity.

n. A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected.

#### C. Negative Pressure Glovebag Systems.

1. Negative pressure glovebag systems shall be used to remove ACM from piping.

2. In addition to the requirements for glovebag systems in Section B above, negative pressure glovebag systems shall have a HEPA vacuum attached to the glovebag/box to prevent collapse during removal.

3. A HEPA vacuum shall be used to prevent collapse of the bag during removal and shall run continually until completion of operation, at which time the pipe shall be encapsulated, and the bag and ACM shall be isolated prior to removal of the bag from the pipe.

#### D. Negative Pressure Glovebox Systems.

Negative pressure gloveboxes may be used to remove ACM from pipe runs when the following work practices are utilized:

1. Gloveboxes shall be constructed with rigid sides and made from metal or other material that can withstand the weight of the ACM and water used during removal.

2. A negative pressure generator shall be used to create negative pressure in the system.

3. An air filtration unit shall be attached to the box.

4. The box shall be fitted with gloved apertures:

a. An aperture at the base of the box shall serve as a bagging outlet for waste ACM and water.

b. A back-up generator shall be present on site.

c. Waste bags shall consist of 6-mil or thicker plastic and be double-bagged before they are filled.

5. At least two persons shall perform the removal.

6. The box shall be smoke-tested for leaks and any leaks sealed prior to use.

7. Loose or damaged ACM adjacent to the box shall be wrapped and sealed in at least two layers of 6-mil or thicker plastic prior to the job or otherwise made intact prior to the job.

8. A HEPA filtration system shall be used to maintain pressure barrier in the box.

#### E. Air Sampling and Analysis Procedures.

1. Background and daily area monitoring shall be performed for all NESHAP glovebag/glovebox projects. Personnel air sampling in the worker's breathing zone may be used to satisfy the requirement for daily area monitoring.

2. Non-aggressive Phase Contrast Microscopy (PCM) clearance air monitoring shall, at a minimum, be required for NESHAP and small glovebag or glovebox projects.

3. If personnel fiber counts exceed the PCM clearance standard of 0.01 fibers per cubic centimeter, aggressive clearance air monitoring shall be performed.

#### F. Glovebag/Glovebox Work Practices.

1. Use of the glovebag shall be terminated, cleanup procedures contained in this Section shall be implemented, and clearance by TEM analysis performed if the owner/operator:

- a. Fails to keep RACM in the glovebag/glovebox;
- b. Fails to keep RACM adequately wet;
- c. Disturbs or dislodges RACM outside of the glovebag/glovebox; and/or
- d. Experiences glovebag failure, including any breach in the glovebag/glovebox.

2. Glovebag/Glovebox Clean-up. Following removal, the owner/operator shall ensure that:

- a. Porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present prior to removing the glovebag or glovebox from the abated pipe. The encapsulant used must be compatible with subsequent coverings.
- b. All polyethylene sheeting, tape, glovebags or gloveboxes and other equipment must be removed and the area inspected for visible residue.
- c. Wet-cleaning using amended water is performed, followed by HEPA vacuuming after surfaces have been allowed to dry. The sequence of wet cleaning and vacuuming shall be repeated until no visible residue is observed in the work area.
- d. When required, final TEM air clearance shall be performed following visual clearance.

G. Disposal.

All applicable disposal requirements of this regulation shall apply.

## **SECTION XV. NON-FRIABLE PROJECTS.**

A. Applicability.

The requirements of this Section shall apply to the owner/operator of any renovation at any facility where the ACM being removed remains non-friable.

B. Notification/Application.

1. Each owner/operator shall:

- a. Contact the landfill to ensure acceptance of non-friable ACM waste;
- b. Provide the Department with a written application and obtain a Department-issued abatement license for the project four (4) working days prior to beginning abatement for NESHAP sized projects of 160 sf or 260 Lf. The license shall be maintained at the project site for the duration of the project;
- c. For all other projects, provide a written application prior to disposal;
- d. Facilities and those in possession of a temporary asbestos storage containment area license may notify the Department quarterly;
- e. Prior to disposing of a non-regulated residential structure, provide a written application to the Department;
- f. Applications must also be submitted for projects where waste will be disposed of out-of-state;
- g. Provide the following information in the written application:
  - (1) Name, address, and telephone number of property/facility owner;
  - (2) Street address of the property or facility where removal will occur;
  - (3) Amount of non-friable ACM to be abated;
  - (4) Description of material (for example, cement-like tiles, asphaltic shingles, cementitious siding, roof flashing); and
  - (5) Name, address, telephone number, contact person, and location (county, city, state) of the landfill that the owner/operator has contacted for disposal of ACM waste;
- h. The written disposal license issued by the Department must accompany the non-friable ACM waste to the landfill.

C. Work Practices.

1. The owner/operator shall prevent dust from being released during the removal of non-friable ACM to prevent exposure.

2. Category I and Category II ACM that will be or has been subjected to grinding, sanding, cutting, chipping, drilling, or abrading shall be considered regulated ACM, and the owner/operator shall comply with all applicable requirements of this regulation.

3. Category I and Category II ACM that will not be or has not been subjected to grinding, sanding, cutting, chipping, drilling, or abrading shall be considered non-regulated ACM, and the owner/operator shall comply with all applicable requirements of OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments or editions.

4. The owner/operator shall ensure that ACM and asbestos-contaminated waste is not intentionally burned or recycled.

**D. Disposal.**

1. Transport and disposal shall occur in a manner that will not permit the release of asbestos fibers into the air.

2. Disposal shall occur at a landfill permitted or approved to accept asbestos waste.

3. All containers shall be labeled with the following warning:

DANGER

CONTAINS ASBESTOS FIBERS

AVOID CREATING DUST

CANCER AND LUNG DISEASE HAZARD

4. The owner/operator shall:

a. Obtain a waste shipment record or other shipment manifest at the landfill to document disposal of all asbestos waste;

b. Ensure that a waste shipment record or other shipment manifest is signed by the landfill operator; and

c. Submit a copy of the waste shipment record or other shipment manifest to the Department within 30 working days after abatement completion.

## **SECTION XVI. STANDARDS FOR DEMOLITIONS.**

**A. Applicability.**

The requirements of this Section shall apply to the owner/operator of a facility to be demolished.

**B. Notification/Application.**

1. Each owner/operator of a demolition to which this Section applies shall:

a. Submit to the Department a written DHEC demolition application at least ten working days in advance of the proposed demolition start date.

b. Delivery of the application shall be by U.S. Postal Service, commercial delivery service, by hand or by other methods deemed acceptable by the Department.

c. Acceptable methods of payment shall be by check or money order made payable to SCDHEC, credit card (VISA, MasterCard, or Discover), and cash.

d. Submit a written demolition project license application for each separate facility that includes all information required on the application form.

e. Submit a complete, legible copy of the building inspection report, which must be less than three years old, for each facility to be demolished.

2. Obtain an asbestos demolition license for any facility, regardless of whether the required building inspection indicates the presence of ACM.

3. When a demolition will begin on a date earlier than the previously-notified start date, the facility owner/operator shall provide the Department with a written notification of the new start date at least ten working days prior to the previously-notified demolition start date.

4. The owner/operator of a demolition operation covered by this section shall:

a. Notify the Department by telephone no later than the original start date when the demolition will begin on a date later than the previously-notified start date.

b. Provide the Department with a revised written application of the new start date no later than the previously-notified start date.

c. Provide the Department with a revised written notification/application immediately when any information pertaining to the demolition project changes, including but not limited to, the start and/or completion date, the demolition contractor, or the landfill.

5. Any facilities being demolished under order of a State or local government agency because the facility is structurally unsound, in imminent danger of collapse, and is a threat to public health or safety may be exempt from the ten-working day notification requirement. However, the owner/operator shall submit a complete demolition license application and written justification documents to the Department for approval prior to commencing the demolition activities.

a. The application shall include all of the following information:

(1) Indication whether the notification is an original, revision, or cancellation;

(2) Name, address, and telephone number of the owner/operator;

(3) Indication that demolition is the type of operation;

(4) Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;

(5) Description of the procedures and analytical methods used to detect the presence of ACM (regulated and nonregulated), date of inspection, and name, address, telephone number, and license number of the building inspector;

(6) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;

(7) Scheduled starting and completion dates of asbestos renovation or demolition;

(8) Description of planned demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;

(9) Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;

(10) Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;

(11) Description of procedures to be followed in the event that unexpected RACM is found;

(12) Name, address, and telephone number of the waste transporter; and

(13) Printed name and signature of the owner/operator submitting the notification and the date signed.

b. The owner/operator shall submit to the Department a clear, legible copy of the signed order that contains all of the following information along with the completed demolition project application:

(1) The name, title, and authority of the State or local government representative who ordered the demolition;

(2) The date that the order was issued; and

(3) The date on which the demolition was ordered to begin.

C. Removal of ACM prior to Demolition.

1. Any demolition of a structure or portion of a structure that contains structural members or components composed of or covered by ACM shall be preceded by removal of all such materials.

2. All ACM, with the exception of those material referenced in Paragraph E. of this Section, shall be removed in accordance with work practice requirements for applicable NESHAP, small, or minor projects prior to demolition.

D. Air Sampling Procedures.

Air monitoring is not required during a demolition except when necessary due to an extenuating circumstance and/or required by the Department.

E. Exemptions from Removal of ACM prior to Demolition.

The following categories of asbestos-containing materials may be left in place during demolition:

1. ACM on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition.

2. RACM that was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, cannot be safely removed. If not removed for safety reasons, all exposed RACM and any asbestos-contaminated debris must be treated as regulated asbestos-containing waste material.

3. Category I and Category II nonfriable mastic, glue, and adhesive ACM that is not friable or in poor condition, and where the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition operations.

F. Disposal of Demolition Debris.

1. Waste that does not contain asbestos may be disposed of as construction debris at a landfill approved or permitted to accept such waste.

2. The owner/operator shall comply with the requirements of the Disposal Section of this regulation and shall ensure that asbestos-containing or asbestos-contaminated waste materials are not burned or recycled.

G. Project License Fees.

1. A project license is required for every facility that is to be demolished, including those that have been destroyed by fire or those whose required building survey indicates there is no ACM present.

2. The Department shall not issue a project license for a demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.

3. Fees shall not be refunded for projects for which the Department has issued a project license.

4. A project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds, in which case the licensee shall be subject to enforcement action for operation without a valid license.

## **SECTION XVII. OUTDOOR PROJECTS.**

A. Applicability.

The notification, work practice, clean-up, and disposal requirements of this Section shall apply to each owner/operator of any regulated O&M or minor, small or NESHAP outdoor renovation.

B. Notification/Application.

1. NESHAP Project.

a. Each owner/operator of a renovation or demolition operation to which this Section applies shall:

(1) Provide the Department with written notification/application at least ten working days prior to any renovation or demolition and pay all applicable project fees. Acceptable delivery of the notification and fee payment is by U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

(2) Update the notification/application and pay appropriate fees as necessary when any previously-notified information changes, including but not limited to, when the amount of asbestos affected changes, when the project start or completion date changes, or when the disposal site changes.

(3) Provide the Department with a legible copy of the building inspection report upon request.

(4) Begin abatement on the start date contained in the Department-issued asbestos project license.

b. When the asbestos stripping or removal operation covered by this Section will begin on a date earlier than the previously-notified start date, the owner/operator shall provide the Department with written notification of the new start date at least ten working days before asbestos stripping or removal work will begin.

c. When the asbestos stripping or removal operation covered by this Section will begin after the date contained in the initial notification and in the asbestos project license issued by the Department, the owner/operator must:

(1) Notify the Department of the new start date by telephone as soon as possible before, but not later than, the original start date; and

(2) Provide the Department with an updated written notice of the new start date as soon as possible before, but not later than, the original start date. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

d. The written notification/application shall include:

(1) Indication whether the notification is an original, revision, or cancellation;

(2) Name, address, and telephone number of the owner/operator;

(3) Type of operation: demolition or renovation;

(4) Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;

(5) Description of the procedures and analytical methods used to detect the presence of ACM (regulated and non-regulated), date of inspection, and name, address, telephone number, and license number of the building inspector;

(6) An estimate of the approximate amount of RACM and Category II nonfriable ACM to be removed from the facility in terms of length of pipe in linear feet, in terms of surface area for other facility components in square feet, or in terms of volume if already off of facility components in cubic feet;

(7) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;

(8) Scheduled starting and completion dates of asbestos renovation or demolition.

(9) Description of planned renovation or demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;

(10) Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;

(11) Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;

(12) Name, address, and telephone number of the waste transporter; and

(13) Printed name and signature of the asbestos owner/operator submitting the notification and date signed.

e. A complete notification/application shall contain all of the above information and shall be reported on a form similar to the one found in 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions.

## 2. Small Project.

In a facility being renovated subject to this Section, the owner/operator shall provide the Department with at least a five calendar day advance written notification of intent to renovate and pay applicable fees as follows:

a. Acceptable delivery of the notification/application shall be by U.S. Postal Service, commercial delivery service, by hand, facsimile transmission, or by other methods deemed acceptable by the Department.

- b. Postmark or deliver the notice before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM.
- c. Update the notification/application when any previously-notified information changes and pay additional project fees as necessary.
- d. The Department may waive the five calendar-day notice on a case-by-case basis.

3. Minor or O&M Projects.

In a facility being abated subject to this Section:

- a. The owner/operator shall provide the Department with written notification/application prior to any abatement and pay all applicable fees as follows:

- (1) Acceptable delivery of the notification/application shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

- (2) Update the notification/application when any previously-notified information changes.

- (3) Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the original start date when a project for which notification was made has been canceled; or

- b. Facility employees who do not meet the definition of a contractor as defined by this regulation or a contractor who has obtained a temporary storage license may maintain a log of all minor abatements performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

1. For projects subject to 40 CFR Part 763, AHERA, as amended, and any subsequent amendments or editions, the facility owner shall ensure that a licensed air sampler performs clearance air monitoring after abatement in areas to be reoccupied, including porticos and covered exterior walkways, and abatement on exterior portions of mechanical systems used to condition interior spaces.

2. Air monitoring is not required for Outdoor Projects that are not subject to EPA 40 CFR Part 763, AHERA regulation.

D. Work Practice Requirements.

1. Preparation.

The owner/operator shall minimize, to the extent reasonable and necessary, the exposure to persons downwind of the project.

2. Removal.

- a. Wet removal methods shall be used.
- b. There shall be no release of visible emissions during preparation, removal, or cleanup.

3. Clean-up.

- a. Following removal, the owner/operator shall ensure that:

- (1) The abated area is thoroughly cleaned using wet methods and amended water and surfaces have been allowed to dry.

- (2) Once dry, the abated area is vacuumed using a vacuum equipped with HEPA cartridges or filters.

- (3) The sequence of wet cleaning and vacuuming is repeated until no visible residue can be observed.

- b. The facility owner shall ensure that the work area is inspected for any remaining visible residue. Evidence of contamination will necessitate additional cleaning by the contractor.

c. For porous surfaces that have been stripped or cleaned of RACM, the owner/operator shall ensure that a coat of encapsulant is applied to the abated surface to secure any residual fibers that may be present. The encapsulant chosen must be compatible with subsequent coverings.

E. Disposal.

The disposal requirements of the Disposal Section of this regulation shall apply to outdoor projects.

## **SECTION XVIII. ENCAPSULATION AND ENCLOSURE.**

A. Applicability.

1. The notification/application, air sampling, work practice, clean-up, and disposal requirements of this Section shall apply to each owner/operator engaged in an encapsulation or enclosure operation where mechanical sprayers will be utilized and the potential to disturb RACM will involve amounts greater than 160 square or 260 linear feet of surfacing materials or thermal system insulation.

2. Surfaces that have been previously coated or treated with an encapsulant and that are not in poor condition are exempt from the requirements of this Section.

B. Notification/Application.

1. In a facility with RACM being encapsulated, the owner/operator shall:

a. Provide the Department with written notification/application at least ten complete working days prior to beginning any encapsulation activities.

b. Notify the Department as soon as possible by telephone and follow-up in writing when any previously-notified information changes or when a previously-notified project has been canceled.

2. Acceptable delivery of notification/application shall be by U. S. Postal Service, commercial delivery service or facsimile transmission, by hand, or by other methods deemed acceptable by the Department.

C. Air Sampling and Analysis Procedures.

1. Background Monitoring.

a. Background ambient air sampling shall be required.

b. At least five air samples shall be collected prior to the start of abatement activities in order to obtain an index of background airborne fiber concentrations.

c. Representative samples should be taken both inside and outside the work area within the facility to establish existing ambient air levels under normal activity conditions.

d. The air sampler shall document any variations and justifications for the variances, and shall provide the information to the Department upon request.

2. Clearance.

The owner/operator shall ensure that non-aggressive TEM clearance air monitoring is conducted prior to re-occupancy of any area that has been encapsulated.

D. Work Practice Requirements.

1. Preparation.

a. The owner/operator of an encapsulation or enclosure operation shall:

(1) Define the work area using barrier tape and danger signs in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

(2) Shut down, lock, and tag out all HVAC equipment in or passing through the work area.

(3) Remove existing filters and dispose of as asbestos-containing waste.

(4) Securely seal all intake and exhaust openings and any seams in system components with 6-mil or thicker polyethylene sheeting and tape.

(5) Securely seal each opening between the work area and uncontaminated areas, including but not limited to windows, doorways, elevator openings, corridor entrances, drains, ducts, electrical outlets, grills, grates, diffusers, and skylights, with a critical barrier consisting of at least one sheet of 6-mil or thicker polyethylene sheeting and tape.

- (6) Thoroughly clean and remove all movable objects from the work area.
  - (7) Thoroughly clean, then cover and secure all non-movable objects in the work area with at least one layer of 4-mil or thicker polyethylene sheeting.
  - (8) Cover and secure all surfaces not being encapsulated or enclosed with at least one layer of 4-mil polyethylene sheeting for walls or ceilings and 6-mil polyethylene sheeting for floors.
2. Encapsulation/Enclosure Procedures.
    - a. During any encapsulation of RACM, the owner/operator shall ensure that:
      - (1) The encapsulant chosen for use is compatible with the substrate to which it will be applied and is appropriate for the application intended.
      - (2) When airless sprayers are utilized, nozzle pressure shall be adjusted between 400 and 1,500 pounds per square inch (psi).
      - (3) Loose, damaged, or fallen RACM is cleaned immediately using wet methods and HEPA vacuuming.
      - (4) RACM is not tracked from the work area onto uncontaminated surfaces.
      - (5) Once all encapsulated surfaces have completely dried, each surface is wet wiped or HEPA vacuumed.
    - b. During any enclosure of RACM, the owner/operator shall ensure that:
      - (1) The enclosure is constructed air-tight so as to prevent the escape of airborne asbestos fibers.
      - (2) Loose, damaged, or fallen RACM is cleaned immediately using wet methods and HEPA vacuuming and is properly packaged for disposal.
      - (3) RACM is not tracked from the work area onto uncontaminated surfaces.
      - (4) Wet methods and HEPA vacuums are used to clean any fallen RACM immediately.
  3. Disposal.

The requirements of the Disposal Section of this regulation shall apply.

## **SECTION XIX. REQUIREMENTS FOR TRAINING COURSES, INSTRUCTORS, AND TRAINING PROVIDERS.**

### **A. Asbestos Training Course Licenses.**

1. An asbestos training course provider who intends to present asbestos training courses within the State shall submit an application for approval, for each initial or refresher training course discipline to be taught, that contains all information necessary to verify qualifications as required by the regulation.
2. An asbestos training course provider must have a separate Department-issued license for each different initial or refresher training course discipline.
3. Licenses for asbestos training course providers will be restricted to courses approved by the Department in accordance with the requirements of this regulation.
4. Each asbestos course license is valid for one year from date of issue, regardless of the number of times the course is taught during the year.
5. Each individual seeking to teach or instruct any portion of any mandatory asbestos training course, regardless of discipline, must submit an instructor application that contains all information necessary to verify qualifications as required by this Section and be approved by the Department.
6. When an asbestos training course instructor seeks to conduct mandatory asbestos training courses in more than one discipline, the instructor must be approved for each separate discipline by the Department.
7. Upon initial approval and licensing of an asbestos training course, the Department will audit and assess the training course provider an initial audit fee prescribed in this regulation.
8. Upon renewal of a training course license, the training course provider will be assessed the annual license renewal fee prescribed in this regulation.

9. An asbestos training course must be approved and currently licensed by the Department on the date that it is taught to be acceptable as a basis for documentation that the person receiving the course certificate has completed the requisite training for asbestos accreditation in any specific work practice topic or discipline.

B. Personnel Licensing Requirements.

In order for an initial or refresher training course in any discipline to be acceptable as a basis for personnel licensing pursuant to this regulation, the course must be licensed and instructor(s) must be approved by the Department.

C. Department Approval.

To qualify for Department approval, an initial or refresher training course in any discipline shall meet the following requirements:

1. Course Content.

a. Each course shall:

(1) Correspond only to a single discipline; and

(2) Provide coverage of specific topics, including instruction in the requirements of this regulation as requested by the Department, and satisfy the requirements of:

(a) The AHERA Model Contractor Accreditation Plan, 40 CFR 763, Subpart E, Appendix C (Federal Register, Volume 59, Number 23, Thursday, February 3, 1994), as amended, and any subsequent amendments and editions, and this regulation; and

(b) The 16-hour Operation and Maintenance Worker Course as specified in this Section.

b. Initial training courses for all supervisors and workers shall include hands-on glovebag training with smoke testing of the glovebag seal in accordance with OSHA 29 CFR 1926.1101(g)(5)(ii), as amended, and any subsequent amendments and editions.

c. Supervisor and worker refresher course hands-on training shall be required and shall include instructor demonstrations; video applications; and written illustrations or representations or other methods designed to communicate work practice procedures to the student. Students are not required to handle equipment or to participate in simulated abatement activities.

2. Course Presentation.

a. An initial worker or O&M worker training course may be conducted by a single qualified instructor if the instructor meets the minimum requirements of this Section.

b. Initial training courses in all disciplines (except worker) shall be taught by at least two Department-approved instructors.

3. Duration of Training.

a. A training course shall not include more than eight hours of training during a single 24-hour period.

b. One day of training equals no less than six and one-half hours of actual classroom or hands-on activities.

c. The total number of hours required for any initial training course shall be completed within a period not to exceed 14 calendar days.

4. Effectiveness of Training.

a. Instructors shall be evaluated by Department-conducted on-site audits or by audits conducted by representatives from states with whom the Department has established reciprocity.

b. Training providers shall conduct courses in a physical environment conducive to learning (such as a classroom).

c. The maximum enrollment of an initial asbestos course shall be 40 participating students.

d. There shall be no more than ten students per instructor during all hands-on portions of initial training.

5. Foreign-Language Instruction.

a. Worker course instructors and students shall be fluent in the language in which the course is being taught.

(1) An English-speaking instructor shall not use an interpreter to instruct foreign-language trainees.

(2) Training courses in all disciplines (except worker) shall be conducted only in English.

b. The training provider shall provide trainees with course materials accurately translated into the language in which the course is being conducted.

6. Testing.

a. At the conclusion of each initial or refresher course, the training provider shall administer an examination in written or oral form to any trainee seeking to obtain a license to perform asbestos-related activities. Oral examinations are allowed to be administered only to individuals seeking training in the worker category.

b. The training provider shall administer an examination designed to test the trainees' familiarity with those issues relevant to the safe and proper performance of asbestos projects.

c. The training provider shall construct the course examination from a pool of validated questions and shall prepare a new examination for each course presentation.

d. A trainee who fails to pass an initial examination by not achieving a minimum score of 70 on a 100-point scale may be retested once. Upon failing to pass an examination on the second attempt, the trainee shall retake the entire training course before being allowed to retest for that discipline.

e. The Department may approve alternative testing it deems appropriate.

7. Certificates.

a. The training course provider shall issue a unique numbered certificate to each student who successfully completes the training course and passes the examination.

b. Each numbered certificate shall include the following information:

(1) Name and last four digits of the Social Security number of the trainee;

(2) Unambiguous course title indicating the discipline and specifying whether the training is an initial or refresher course;

(3) A unique certificate number;

(4) Inclusive dates of training course;

(5) Examination date;

(6) A statement indicating that the person whose name appears on the certificate has completed the training course and successfully passed an examination;

(7) For courses covered under 40 CFR Part 763, Subpart E, Appendix C, as amended, and any subsequent amendments and editions, a certificate expiration date that is one year after the date the course was completed and the applicable examination passed;

(8) The name, address, and telephone number of the training provider;

(9) The printed name and signature of the principal instructor;

(10) Training course location; and

(11) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II of Section 206 of the Toxic Substances Control Act (15 U.S.C.A. Section 2646), with the exception of O&M certificates.

8. Notifications and Reporting.

a. A training provider who intends to present a training course within the state shall notify the Department in writing at least ten calendar days prior to the first day of the course. The written notification must include the following information:

(1) Training provider name, address, telephone number, and contact person;

(2) Training course title;

(3) Inclusive dates of course and applicable exam;

- (4) Daily start and completion times;
- (5) Location and detailed directions to course facility;
- (6) Language in which the course is taught;
- (7) Names of the instructors; and
- (8) A copy of the training course agenda. (If the agenda is identical to one previously submitted to the Department, an additional copy is not required.)

b. Within seven days of conclusion of a training course presented within the State, the training provider shall submit the following information to the Department:

- (1) Name of the course indicating whether initial or refresher;
- (2) Inclusive dates of the course and examination;
- (3) Names of all course instructors and topics taught;
- (4) The course location;
- (5) The name and Social Security number of every trainee, including names of those who did not successfully pass or otherwise complete the course;
- (6) The unique certificate numbers of every trainee who completed the course and passed the examination; and
- (7) Name, address, and telephone number of the training provider.

c. Out-of-state training providers shall submit any information specified in this Section to the Department upon request.

d. Failure to submit a written course notification or course roster in the timeframe prescribed by this Section may result in the rejection of the course and certificates for licensure by the Department.

#### 9. Record Keeping.

a. The person, sole proprietorship, public corporation, or incorporated entity operating as a training provider shall retain copies of records related to asbestos training approved pursuant to this regulation for three years or for a period of time as defined in Title II, Section 206 of the Toxic Substances Control Act of the United States (15 U.S.C.A. Section 2646), as amended.

b. In the event that ownership of the sole proprietorship, public corporation, or incorporated entity operating as a training provider is transferred to a different owner, all records maintained during the previous three years shall be transferred and maintained by the new owner.

c. Records that must be maintained shall include those defined in Title II, Section 206 of the Toxic Substances Control Act of the United States (15 U.S.C.A. Section 2646), as amended, and in all cases shall include the following:

- (1) Course curriculum materials;
- (2) Examinations and scores of all persons who have taken examinations;
- (3) Instructor applications and resumes;
- (4) Training course approval applications;
- (5) Rosters of individuals taking training courses;
- (6) Copies of training course notifications; and
- (7) Copies of all correspondence with federal and/or state accreditation agencies regarding instructor and training course approvals, disapprovals, suspensions, or audits.

#### D. Operation and Maintenance (O&M) Worker Course.

1. An initial O&M training course shall be at least 16 hours in length and shall provide, at a minimum, information on all of the following topics:

- a. The physical characteristics of asbestos, including fiber size, aerodynamic characteristics, and physical appearance.

b. The health hazards of asbestos, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, and health basis for the standards.

c. Typical locations, uses, and types of ACM; and recognition of damage, deterioration, and delamination of ACM.

d. Employee personal protective equipment, including the types and characteristics of respirators; limitations of respirators; proper selection, inspection, donning use, maintenance and storage procedures for respirators; methods for field testing of the face-piece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit test procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

e. Air monitoring procedures and requirements included under OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, including a description of equipment and methods, reasons for air monitoring, types of samples, and current standards with proposed changes.

f. Description of the proper methods of handling RACM to include state-of-the-art work practices for asbestos O&M activities including: purpose, proper construction, and maintenance of barriers; posting of warning signs; electrical and ventilation system lockout/tagout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of HEPA vacuums; and proper cleanup and disposal procedures. Work practice requirements as they apply to removal, encapsulation, enclosure, and repair shall be discussed individually.

2. A yearly review course shall be one day in length and shall review the health hazards associated with exposure to asbestos; the locations, uses, types, and condition of ACM; hands-on activities; updated information on state-of-the-art procedures and equipment; and regulatory changes and interpretations. Actual instruction time shall be a minimum of six and one-half hours. The Department may request coverage of specific topics.

3. The requirements of this Section pertaining to course presentation, effectiveness of training, foreign-language instruction, testing, certificates, notification and reporting, record keeping, qualifications for instructors, course approval, and periodic audits shall apply to O&M courses.

E. Qualifications for Instructors of Non-Work Practice Topics.

1. Applicants seeking approval to teach segments of asbestos training courses other than work practice or hands-on exercises shall be actively working in the field of expertise for which he or she is conducting training.

2. The following documentation is required for instructors of non-work practice topics:

a. A copy of a high school, General Education Development (GED), or college/university diploma;

b. A copy of all professional licenses relevant to the subject matter being taught; and

c. The name, address, and telephone number of the applicant's current employer.

F. Initial and Refresher Course Instructor Qualifications.

The Department reserves the right to reject instructor training and/or experience that it deems unacceptable for qualification.

1. Worker Discipline.

a. Previous Training.

The applicant shall meet current EPA and Department accreditation requirements for supervisors.

b. Education/Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant does not possess either a GED or high school diploma, the applicant shall:

(a) Have at least 360 instructional hours as an instructor in an EPA-approved worker course; and

(b) Have at least 1,440 hours experience in a worker or supervisory capacity of contained work areas.

(2) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have at least 960 hours of documented experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 240 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 240 documented hours of occupational safety, health, and environmental instructional hours taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.1.b.(2)(b) of this Section.

(3) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have at least 480 hours of documented experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 120 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 120 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.1.b.(3)(b) of this Section.

## 2. Supervisor Discipline.

### a. Previous Training.

The applicant shall meet current EPA accreditation requirements for supervisors.

### b. Education Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant does not possess either a high school or GED diploma, the applicant shall:

(a) Have at least 360 documented hours as an instructor in an EPA-approved supervisor course; and

(b) Have at least 1,440 hours of documented experience in a supervisory capacity of contained work areas.

(2) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have at least 960 hours of documented experience in a supervisory capacity of contained work areas; or

(b) Have at least 240 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 240 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.2.b.(2)(b) of this Section.

(3) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have at least 480 hours experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 120 instructional hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 120 hours of occupational safety, health, and environmental instructional hours taught in courses required to meet federal and State regulations for the instructional hours required in Paragraph F.2.B.(3)(b) of this Section.

3. Management Planner Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for management planners.

b. Education/Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented management planning experience showing at least 25 management plans written in the last three years, or documented experience as the project manager for at least 25 asbestos projects in the last three years, or a combination of management plans and projects managed; or

(b) Have at least 48 documented hours as an instructor in an EPA-approved management planner course.

(c) The applicant may substitute 48 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.3.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented management planning experience showing at least 12 management plans written in the last three years, or documented experience as the project manager for at least 12 asbestos projects in the last three years, or a combination of management plans and projects managed; or

(b) Have at least 32 documented hours as an instructor in an EPA-approved management planner course.

(c) The applicant may substitute 32 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.3.b.(2)(b) of this Section.

4. Building Inspector Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for asbestos building inspectors.

b. Education/Asbestos Work Experience.

The applicants shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented experience including asbestos inspections in at least one million square feet of building space in the last three years; or

(b) Have at least 60 documented hours as an instructor in an EPA-approved building inspector course.

(c) The applicant may substitute 60 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.4.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented experience including asbestos inspections in at least 500,000 square feet of building space in the last three years; or

(b) Have at least 40 documented hours as an instructor in an EPA-approved building inspector course.

(c) The applicant may substitute 40 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.4.b.(2)(b) of this Section.

5. Project Designer Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for asbestos project designers.

b. Education/Asbestos Work Experience.

The applicants shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented asbestos project design experience including the design of at least 12 asbestos projects in the last three years; or

(b) Have at least 30 documented hours as an instructor in an EPA-approved asbestos project designer course.

(c) The applicant may substitute completion of 30 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.5.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented asbestos project design experience including the design of at least six asbestos projects in the last three years; or

(b) Have at least 20 documented hours as an instructor in an EPA-approved asbestos project designer course.

(c) The applicant may substitute 20 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.5.b.(2)(b) of this Section.

G. Documentation of Instructor Qualifications.

1. Applicants seeking approval to teach work-practice or hands-on topics or to act as a sole instructor shall submit documentation of training, education, and work experience as required herein.

2. Documentation of Training.

a. The applicant shall submit a copy of initial and subsequent refresher certificates of training from courses approved by the EPA or by an EPA-accredited state, and provide for each course the title, dates of instruction, names of instructors, name, address, and telephone number of the training provider.

b. Instructors shall take refresher training from a training provider not affiliated with the instructor for at least one discipline every year. Instructors teaching multiple disciplines shall alternate among the different disciplines taught.

3. Documentation of Education.

The applicant shall submit a copy of high school, GED, or college or university diploma or the name and address of the conferring institution.

4. Documentation of Asbestos Work Experience.

a. An applicant for instructor of worker or supervisor training courses shall submit a detailed description of job duties and responsibilities as an asbestos worker, foreman, supervisor, or consultant, including all of the following:

(1) Inclusive dates of employment;

(2) The name of the employer;

(3) Types of ACM removed;

(4) Number of workers supervised;

- (5) Name, address, and telephone number of each different employer; and
- (6) Name of immediate supervisor at each different employer.
- b. An applicant for instructor of building inspector, management planner, or project designer training courses shall include all relevant information concerning experience completing inspections, management plans, or project designs, including all of the following:
  - (1) Size and location of buildings inspected;
  - (2) Descriptions of management plans, projects managed, or projects designed;
  - (3) Name, address, and telephone numbers of building owners;
  - (4) Name, address, and telephone numbers of all employers; and
  - (5) Inclusive dates of employment.

c. Documentation of Instructor Experience.

The applicant shall submit a detailed description of instructor experience, including all of the following:

- (1) Name of training courses taught;
- (2) Topics taught for each course;
- (3) Inclusive dates of each training course;
- (4) Total hours taught for each training course; and
- (5) Name, address, and telephone number of each training organization with which experience is claimed.

H. Work Practice Topics.

Instructors shall meet the qualifications for instructors listed in Section XIX.F. above in order to teach the following asbestos Work Practice Topics:

- 1. O&M Worker and Worker Refresher:
  - a. State-of-the-Art Work Practices.
  - b. Hands-on Exercises (initial course only).
- 2. Worker and Worker Refresher:
  - a. State-of-the-Art Work Practices.
  - b. Hands-on Exercises (initial course only).
- 3. Supervisor and Supervisor Refresher:
  - a. State-of-the-Art Work Practices.
  - b. Techniques for Asbestos Abatement Activities.
  - c. Hands-on Exercises (initial course only).
- 4. Management Planner and Management Planner Refresher:
  - a. Evaluation/Interpretation of Survey Results.
  - b. Hazard Assessment.
  - c. Developing an Operation and Maintenance (O&M) Plan.
  - d. Record Keeping for the Management Planner.
  - e. Assembling and Submitting the Management Plan.
- 5. Building Inspector and Building Inspector Refresher:
  - a. Pre-inspection Planning and Review of Previous Inspection Records.
  - b. Inspecting for Friable and Non-friable Asbestos Containing Materials (ACM).
  - c. Assessing the Condition of Friable ACM.
  - d. Bulk Sampling/Documentation of Asbestos in Schools.
  - e. Record Keeping and Writing Inspection Reports.
  - f. Field Trip.

6. Project Designer and Asbestos Project Designer Refresher:

- a. Safety System Design Specifications.
- b. Designing Abatement Solutions.
- c. Budgeting/Cost Estimation.
- d. Writing Abatement Specifications.
- e. Preparing Abatement Drawings.
- f. Occupied Buildings.
- g. Field Trip.

I. Course Approval.

1. The Department may base approval of an initial or refresher training course in any discipline in whole or in part on the provider's compliance with the requirements of Section XIX.C., the accuracy and applicability of the materials submitted pursuant to this Section, observation by a Department representative of an actual presentation of the course, or approval from the EPA, an EPA-accredited state, or a state having reciprocity with the Department.

2. The training provider shall submit all of the following information to the Department not less than 30 days prior to the initial presentation of the course within the State:

- a. Course sponsor's name, address, and telephone number;
- b. The course curriculum;
- c. Length of training in days;
- d. Description of amount and type of hands-on training;
- e. Topics covered in the course;
- f. A copy of all course materials, including student manuals, student handouts, instructor notebooks, lecture outlines, etc;
- g. A detailed statement regarding the length, format, and development of examinations, and copies of actual examinations;
- h. A description of procedures used to administer examinations and to ensure their security;
- i. Instructor names, documentation of qualifications (including resumes), and the subject areas that each instructor will teach;
- j. Description and samples of numbered certificates that will be issued to students who successfully complete the course, and a statement regarding the manner in which certificate numbers are generated; and
- k. Other applicable information requested by the Department.

3. The provider of any training course presented in the State shall allow Department representatives to attend, monitor, and evaluate the course without charge and without advance notice.

4. The provider of any training course approved by the Department shall notify the Department within ten days of any changes in course topics, materials, and instructors. The training provider shall provide notification in writing and shall submit appropriate documentation for Department approval.

5. The Department reserves the right to require additional training as appropriate, including training specific to this regulation, air sampling strategies, or roofing projects.

6. The Department shall withdraw approval of a training course if it determines that:

- a. The course no longer meets the requirements of this regulation or the EPA Model Accreditation Plan.
- b. Approval from the EPA, an EPA-accredited state, or a state with whom the Department has reciprocity has been withdrawn.

J. Periodic Audits.

1. The Department may conduct unannounced audits of any training course to ensure compliance with all requirements of this regulation.

2. All in-State training providers shall maintain the approval status of their training courses by submitting to periodic on-site audits by the Department. Such audits may be unannounced. In-State training courses that have been audited by a state having a written reciprocal agreement with the Department regarding periodic audits may be exempted from the periodic audit rule.
  3. The Department shall conduct periodic audits for the purpose of verifying that:
    - a. The training course complies with all requirements of this regulation;
    - b. The training course content has been updated and is current with state-of-the-art methods and technology available in the asbestos abatement and management industry;
    - c. The training course meets instructor qualifications and performance standards, training course administration standards, hands-on training standards, and instructor-to-student and workstation-to-student ratios as established by the Department;
    - d. The training course sponsor has maintained training-related records as required in Paragraph C.9. of this Section; and
    - e. Previously-approved curriculum materials and instructors are subject to the training course standards as defined by the Department.
  4. All training course sponsors shall allow, at no charge, representatives from the Department to attend all or any part of any training course for the purpose of conducting periodic audits. Training course sponsors shall not restrict access to any part of a training course for which the Department is conducting an on-site audit. As part of the audit process, training course sponsors shall make records that are required by this regulation available to the Department upon request.
  5. As a result of a periodic on-site audit of any training course previously approved by the Department, the Department may revoke or suspend its approval; or, for training courses that have been approved by other federal or state approval agencies, the Department may refuse to accept certificates of training if any of the following deficiencies are noted during the audit:
    - a. The course is not in compliance with this regulation;
    - b. The training provider misrepresents the extent of the training course's approval; or
    - c. The Department finds evidence of falsification of any records required by this regulation.
  6. The Department shall not recognize a certificate of training issued by any in-State training course that has had its acceptance suspended or revoked as a result of an on-site audit until a subsequent audit shows that the cause of suspension or revocation has been corrected.
  7. The Department shall not recognize a certificate of training issued by any training course that has had its approval, acceptance, or certification revoked by any other state or federal approval agency until the approval has been reinstated by the revoking agency.
- K. Training Course Fee Schedule.
1. Initial approval for each training course license - \$350.00 per day per course.
  2. Annual license renewal for Department-approved training courses - \$200.00 per course.
  3. Each course license is valid for an entire year, regardless of the number of times the course is taught during the year.
  4. Fees shall not be refunded if a training course is denied a license per this regulation.
  5. Failure to pay annual training course license renewal fees may, after a hearing in accordance with the provisions of this regulation, result in the course license being revoked.

## **SECTION XX. INDUSTRIAL MANUFACTURING AND ELECTRICAL GENERATING FACILITIES.**

### **A. Applicability.**

1. In lieu of requirements described in other sections of this regulation except as specified herein, the requirements of this Section shall apply to the owner of an industrial manufacturing or electrical generating facility that has obtained a group license for facility employees or employees of the designated long-term in-house contractor.
2. Unless otherwise specified herein, the applicable requirements of this regulation shall apply to any asbestos project involving RACM, regardless of the size of the project.

3. No person shall engage in any asbestos project or abatement involving RACM unless licensed to do so by the Department.

4. Industries that choose not to obtain a facility group license or who hire companies or individuals not covered under the facility group license shall satisfy all applicable requirements described in other sections of this regulation, except for with regard to the frequency with which building inspections are required, as outlined in Section XX, J of this regulation.

B. Training.

Employees of industrial manufacturing or electrical generating facilities and of such facilities' long-term in-house contractors who perform asbestos abatement projects shall satisfy the training requirements as specified below:

1. Employees who perform OSHA-designated Class I and II work not subject to OSHA's exceptions shall receive training consistent in length and curriculum with 40 CFR Part 763, Subpart E, Appendix C, as amended, and any subsequent amendments and editions. Employees who perform OSHA-designated Class III work not subject to OSHA's exceptions shall receive training consistent in length and curriculum with 40 CFR 763.92(a)(2).

2. All training conducted for the purpose of satisfying B.1 of this Section shall be conducted by a person who meets the applicable instructor qualifications of the Training Section of this regulation.

C. License Application.

1. Each person covered under a facility group license shall successfully complete a Department-approved initial or refresher training course specific to the discipline, and at the conclusion of the course, shall successfully pass an examination, when applicable, with a score of 70 percent or above.

2. Each facility seeking a group license shall submit a completed application to the Department in a format designated by the Department. The application must state the type of license for which the application is being made and must include the following information:

a. Name, mailing address, and street address of the industrial manufacturing or electrical generating facility;

b. Name, title, and telephone number of a responsible company official;

c. Name of the designated long-term in-house contractor, when applicable; and

d. Name, Social Security number, discipline, training provider or approved instructor, and, when applicable, examination date of most recent training certificate for each person to be included under the license.

e. An owner shall notify the Department quarterly of any change in facility name, contact person, mailing address, street address, telephone number, long-term in-house contractor, and/or personnel covered by the group license.

3. Acceptable documentation of training may be requested by the Department and shall include:

a. An original certificate issued by the training course provider that meets the requirements specified in this regulation; or

b. A valid, original license or accreditation issued by a state that has a reciprocal arrangement with the Department (photocopies or telephone facsimile copies shall not be accepted); or

c. A letter verifying successful completion of training that is sent directly to the Department from the approved training instructor.

4. Duration of a License.

a. A license shall automatically become invalid if an instrument of payment is returned for insufficient funds.

b. A group license shall expire one year from the process date, unless the Department suspends or revokes the license at an earlier date. No person covered by a group license shall engage in any asbestos project after one year from the examination date printed on his or her most recent training certificate regardless of the expiration date of the group license.

D. Continuing Education

1. After successful completion of an approved initial training course, each employee to be covered under a group license shall thereafter successfully complete a Department-approved initial

or refresher training course specific to the discipline, and, at the conclusion of each course shall pass an examination with a score of 70 percent or above where applicable.

2. If more than 12 months but fewer than 24 months have elapsed since completing an initial or refresher training course, an applicant shall successfully complete either a refresher training course or an initial training course.

3. If more than 24 months have elapsed since successfully completing an initial or refresher training course, an applicant shall complete another initial training course.

E. Fees.

1. No application will be processed unless accompanied by the required fee.

2. Departmental receipt and deposit of fees submitted with an application shall in no way indicate approval of the application or guarantee the Department's issuance of a license.

3. Fees shall not be refunded if a license is denied.

F. Group License Fee Schedule.

The fee for a group license shall be as follows:

1. Up to 10 people - \$ 25.00 minimum fee
2. 11 to 20 people - \$ 2.50 per person
3. 21 to 50 people - \$ 5.00 per person
4. 51 to 90 people - \$ 7.50 per person
5. 91 persons or more - \$ 500.00 maximum fee
6. The minimum fee for a group license is \$25.00 and the maximum is \$500.00.

G. Project Fees.

1. The Department shall collect project license fees for all RACM being removed and for previously non-regulated ACM rendered regulated by use of destructive removal techniques such as chipping, grinding, sawing, abrading, drilling, or extensive breaking.

2. Abatement project fees for RACM are calculated at 10 cents per linear, cubic, or square foot, with a minimum fee of \$25.00 and a maximum fee of \$1,000.00.

3. The Department will not issue an abatement project license for a renovation or demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.

4. Fees will not be refunded on projects for which the Department has issued an asbestos project license.

5. An abatement project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds.

H. Action on an Application.

Within 15 calendar days after receiving an application, the Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 30 calendar days after receiving a completed application, including all additional information requested, the Department will issue a license or deny issuance of the application.

I. Conditions and Generic Alternatives.

In granting a license, the Department may impose reasonable terms and conditions to ensure continuous compliance with the requirements of this regulation.

J. Asbestos Project General Information.

1. Prior to beginning a renovation or demolition operation at a facility, the owner/operator shall ensure that a building inspection is performed to identify the presence, location, and estimated quantity of ACM that may be disturbed by the work activity. The building inspection shall be performed by a person licensed as a building inspector or management planner.

2. The building inspector or management planner shall comply with the Building Inspection Section of this regulation.

3. To be acceptable, a building inspection shall have been performed no earlier than five years prior to the renovation or demolition, or, if more than five years have elapsed since the most recent inspection, the previous inspection shall be confirmed and verified by a person licensed as a building inspector.

K. Notification.

1. For NESHAP renovation projects, refer to the NESHAP Project Section of this regulation.

2. For demolitions, refer to the Demolition Section of this regulation.

3. For small, minor, and O&M renovation projects, either:

a. Provide the Department with written notification/application prior to any abatement and pay all applicable fees.

(1) Deliver the notification by U.S. Postal Service or commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

(2) Postmark or deliver the notice at least four working days for small projects before commencing asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM. For minor and O&M projects, postmark or deliver the notice prior to commencing abatement activities.

(3) Update the notification when any previously-notified information changes and pay additional project fees as necessary.

(4) Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the originally notified start date when a project for which notification was sent has been canceled.

(5) The Department may waive the five-calendar-day prior notice requirement on a case-by-case basis.

b. Maintain a log of all small, minor, or O&M projects performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of the removal, names of individuals who performed the abatement, the temporary waste storage location, and the name of the landfill used for disposal.

4. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the notified start date when a project has been canceled.

5. A licensed asbestos project designer shall prepare and implement the written design for each abatement renovation project involving the removal of greater than 3,000 square, 1,500 linear, or 656 cubic feet of RACM in a facility to be reoccupied. However, all projects shall be designed in accordance with the requirements of 40 CFR 763.90(g), as amended, and any subsequent amendments and editions, and this regulation.

6. The disposal requirements of this regulation shall be applicable to asbestos-containing and asbestos-contaminated materials for any abatement activity.

L. Emergency Operation Documentation.

1. For an emergency operation, the owner/operator shall submit project notification as early as possible before, but not later than, the working day following the emergency operation.

2. The facility owner shall notify the Department in writing of the date and hour that the emergency occurred; a description of the sudden, unexpected event; and an explanation of how the event caused an unsafe condition, public safety or health threat, equipment damage, or would impose an unreasonable financial burden. The owner shall submit this information with the project notification as required in this Section.

M. Work Practices.

1. NESHAP projects performed at an industrial manufacturing or electrical generating facility by individuals covered under the facility's group license shall satisfy the work practice requirements of 40 CFR 61.145, as amended, and any subsequent amendments and editions, and shall ensure that: wet removal methods are used; no visible emissions are released to the outside air; and all asbestos

waste is sealed in leak-tight containers and disposed of at a landfill permitted to accept asbestos waste.

2. Any small or minor asbestos project or any O&M activity performed at an industrial manufacturing or electrical generating facility shall be subject to the work practice requirements of the Small Project, Minor Project, or O&M Project Sections whenever feasible. When such work practice requirements are not feasible or when alternate Federal OSHA and EPA work practice standards are used, the owner/operator shall perform work in such a way to provide assurance of RACM containment.

3. The use of glovebags must be in accordance with the requirements of OSHA 29 CFR 1926.1101.

4. The owner/operator shall ensure that contaminated water is filtered through a five micron or smaller filter and discharged to a sanitary sewer system. No contaminated or filtered water shall be allowed to leak or drain outside of the work area.

5. The Department may, on a case-by-case basis, approve alternative procedures for work practices, control of emissions from an asbestos abatement project, or air monitoring, provided the owner/operator submits a written description of the alternative procedure to the Department prior to beginning work and demonstrates to the satisfaction of the Department that compliance with the prescribed procedures will not be practical or feasible and that the proposed alternative procedures provide equivalent protection from asbestos exposure.

6. Legible copies of Departmental letters of approval for alternative work practices shall be kept at the project site and available for inspection for the duration of abatement.

N. Exemption from Wetting for Any Sized Project.

The requirements of the Exemption From Wetting Section of this regulation shall apply.

O. Disposal.

The requirements of the Disposal Section of this regulation shall apply except as follows:

1. In lieu of locking metal dumpster doors and tops, the dumpster containing asbestos waste may be kept in a secured area to which access is controlled.

2. Asbestos waste may be kept at the site until a sufficient quantity has accumulated for a full shipment. In this instance, the facility owner shall submit a copy of a completed waste shipment record or other shipping manifest to the Department within 45 working days of shipment of the waste.

P. Requirements for Training Courses and Training Instructors.

In order for initial or refresher training subject to the requirements of 40 CFR Part 763 to be acceptable as a basis for licensing pursuant to this Section, the course curriculum and instructors must meet the applicable curriculum criteria in the Training Section of this regulation and be approved by the Department.

Q. The requirements of the Reprimands, Suspensions, and Revocation Section of this regulation shall apply.

R. The requirements of the Contested Cases Section of this regulation shall apply.

S. The requirements of the Records Section of this regulation shall apply.

T. The requirements of the Other Requirements Section of this regulation shall apply.

## **SECTION XXI. REPRIMANDS, SUSPENSIONS AND REVOCATION.**

The Department may reprimand any licensee or revoke or suspend any license based upon violation of any requirement stated herein. Reasons for reprimand, suspension, or revocation may include, but are not limited to, falsification or known omission of any written submittal required as part of this regulation, submission of fraudulent information or documentation, omission or improper use of work practices, improper disposal of ACM, or spread of asbestos emissions beyond the containment area.

## **SECTION XXII. CONTESTED CASES**

A. A Department decision involving the issuance, denial, renewal, suspension, or revocation of a permit or license may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

B. Any person to whom an order or civil penalty is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

### **SECTION XXIII. RECORDS.**

Each licensed asbestos owner/operator shall retain, for at least three years after their issuance, all records required herein unless otherwise stated. These records shall be made available to the Department for review upon request.

### **Section XXIV. OTHER REQUIREMENTS.**

A. The requirements of this regulation shall in no way be construed to relieve the owner/operator from compliance with other regulatory requirements or contractual agreements that may be more restrictive.

B. The Department reserves the right to assess additional fees for licensing, training course auditing, and abatement activities, should enabling legislation be enacted.

### **SECTION XXV. SEVERABILITY CLAUSE.**

The provisions of Sections I through XXV of this regulation must be construed as separate provisions. If a provision is judged to be invalid in a court of law of this State, the court's decree shall apply only to the provision and action specified and shall have no effect on any other provision unless stated in the court's decree. The invalidity does not affect other provisions or applications of the Section which may be given effect without invalid provision or application and pursuant to this requirement, the provisions of these Sections are severable.

## **61-87. UNDERGROUND INJECTION CONTROL REGULATIONS.**

(Statutory Authority; 1976 Code, Title 48, Chapter 1)

#### **Editor's Note**

Unless otherwise provided, adopted June 24, 1983.

### **61-87.1. Purpose.**

These regulations set forth the specific requirements for controlling underground injection in the State and include provisions for: the classification and regulation of injection wells; prohibiting unauthorized injection; protecting underground sources of drinking water from injection; classifying underground sources of drinking water; and, requirements for abandonment, monitoring, and reporting for existing injection wells used to inject wastes or contaminants.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.2. Definitions.**

The definition of any word or phrase used in these regulations shall be the same as defined in Section 48-1-10 of the 1976 Code, except that the following words and phrases shall have the following meaning and shall apply to the underground injection control program.

A. "Abandoned well" means a well the use of which has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for monitoring purposes.

B. "Aquifer" means a geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of ground water to wells or springs.

C. "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into permeable strata, or to prevent fluids from entering or leaving the hole.

D. "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

E. "Confining zone" means a geological formation, group of formations, or part of a formation that is capable of significantly limiting fluid movement above or below an injection zone.

F. "Contaminant" means any substance or matter which degrades the quality of naturally occurring water either directly or indirectly as a result of man's activity.

G. "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

H. "Facility, operation or activity" means any injection well or system including land and appurtenances thereto.

I. "Flow rate" means the volume per unit of time of a fluid which emerges from an orifice, pump, turbine, or passes along a conduit or channel.

J. "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

K. "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

L. "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids.

M. "Ground water" means water below the land surface in a zone of saturation.

N. "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geological settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

O. "Injection" means the emplacement of fluid into the subsurface or ground waters by an injection well except fluids used in association with well construction, development, or abandonment.

P. "Injection well" means any well which is used or intended to be used for injection.

Q. "Injection zone" means a geological formation, group of formations, or part of a formation which is receiving injection, has received injection, or is intended to receive injection.

R. "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

S. "Non-contact system" means a closed system which conveys water pumped from the aquifer through a process on a once-through basis without significantly altering the chemical quality of the water to be returned to the aquifer.

T. "Owner/operator" means the person who owns the land on which a facility is located and/or the person who is responsible for the overall operation of the facility.

U. "Person" means any individual, federal agency, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate, or any legal entity whatsoever.

V. "Point of injection for Class V wells" means the last accessible point prior to waste fluids being released into the subsurface environment through a Class V well.

W. "Pressure" means the total load or force per unit area acting on a surface.

X. "Septic system" means a well that is used to emplace sanitary wastes below the surface and is typically comprised of a septic tank and subsurface fluid distribution system. The UIC requirements do not apply to single family residential septic systems nor to non residential septic systems which are used solely for disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

Y. "Stratum (plural strata)" means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Z. "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

AA. "Subsidence" means the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydro-compaction); oxidation of organic matter in soils; or added load on the land surface.

BB. "Total dissolved solids (TDS)" means the amount of material in solution gravimetrically determined after filtering the sample through a 0.45-um membrane filter and drying at 180°C.

CC. "Underground source of drinking water (USDW)" means an aquifer or its portion:

- (1) Which supplies any public water system; or,
- (2) Which contains a sufficient quantity of ground water to supply a public water system; and,
  - (a) Currently supplies drinking water for human consumption; or,
  - (b) Contains water with fewer than ten thousand milligrams per liter total dissolved solids.

DD. "Waste" shall mean and include the following:

(1) "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparations, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of the wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the water is not mixed with industrial wastes.

(2) "Industrial waste" means any superfluous liquid, gaseous, solid or other substance or a combination thereof resulting from any process of industry, manufacturing, trade or business.

(3) "Hazardous waste" has the meaning given in Section 44-56-20 of the 1976 South Carolina Code of Laws as amended and regulations promulgated pursuant thereto.

EE. "Well" means any excavation which is cored, bored, drilled, jetted, dug, or otherwise constructed the depth of which is greater than its largest surface dimension; or, a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or, a subsurface fluid distribution system.

FF. "Well injection" means the subsurface emplacement of fluids through a well.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 24, Issue No. 11, eff November 24, 2000; State Register Volume 26, Issue No. 1, eff January 25, 2002.

### **61-87.3. Scope.**

These regulations apply to all persons owning, using, or proposing to use any well for injection, but does not include any dug hole, or well which is not used for emplacement of fluids. Minimum standards for construction and abandonment of injection wells are as those stated for all wells in the SC Well Standards and Regulations (R.61-71).

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 14, Issue No. 3, eff March 23, 1990; State Register Volume 24, Issue No. 11, eff November 24, 2000.

### **61-87.4. Prohibition of Unauthorized Injection.**

The injection of any fluids to the subsurface or ground waters of the State by means of an injection well is prohibited except as authorized by a Department permit or rule.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.5. Protection of Underground Sources of Drinking Water.**

The movement of fluids containing wastes or contaminants into underground sources of drinking water as a result of injection is prohibited if the presence of the waste or contaminant:

- A. May cause a violation of any drinking water standard under R61-58.5; or,
- B. May otherwise adversely affect the health of persons.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

#### **61–87.6. Classification of Underground Sources of Drinking Water.**

The Department may classify (identify by narrative description, illustrations, maps, or other means) and shall protect, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an “underground source of drinking water.”

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

#### **61–87.7. Area of Review Requirements for Class II and III Wells.**

The area of review for an injection well or field, project or area of the State shall be a fixed radius around the well, field or project of one fourth mile or greater as determined by the Department. In determining the fixed radius, the following factors shall be taken into consideration by the Department:

- A. Physical and chemical characteristics of the injected and formation fluids;
- B. Injection rate and pressure;
- C. Hydrogeology;
- D. Population and ground-water use and dependence;
- E. Historical practices in the area.
- F. Well design and construction standards.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

#### **61–87.8. Corrective Action Requirements for Class II and III Wells.**

A. Corrective action required under these regulations for improperly sealed, completed, or abandoned wells which penetrate the injection zone and are located within the area of review shall consist of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water.

B. The applicant shall identify all such wells and submit a plan for corrective action with the permit application.

C. If the plan is determined adequate, the Department shall incorporate it into the permit as a condition.

D. If review of the application indicates that the applicant's plan is inadequate, the Department shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit or deny the application.

E. To determine the adequacy of corrective action proposed by the applicant and the additional steps needed to prevent fluid movement into underground sources of drinking water the following criteria and factors shall be considered by the Department:

- (1) Nature and volume of the injected fluid;
- (2) Nature of formation fluids or by-products of injection;
- (3) Potentially affected population;
- (4) Geology;
- (5) Hydrology;
- (6) History of the injection-operation;
- (7) Completion and plugging records;
- (8) Abandonment procedures in effect at the time the well was abandoned;
- (9) Hydraulic connections with underground sources of drinking water.
- (10) Well design and construction standards.

F. The Department may require, as a permit condition, that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well or water supply well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such restrictions on injection pressure may

be a part of the compliance schedule for corrective action and last until all other required corrective action has been taken.

G. No permit for a new injection well will be issued until all required corrective action has been taken.

H. The Department's corrective action requirements for Class III wells shall include the consideration of the overall effect of the project on the hydraulic gradient in potentially affected Underground Sources of Drinking Water and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program shall be designed to verify the validity of such determinations.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.9. Mechanical Integrity Requirements for Class II and III Wells.**

A. An injection well will be considered to have mechanical integrity if:

- (1) There is no measurable leak in the casing, tubing or packer; and,
- (2) There is no measurable fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore which would result in deterioration of the water quality in zones above or below the injection zone.

B. The method used to determine the absence of any measurable leaks in the casing, tubing or packer shall be conducted as follows:

- (1) Monitoring of the annulus pressure; or,
- (2) A pressure test with liquid or gas.

C. The method used to determine the absence of any measurable fluid movement into underground sources of drinking water shall be the results of a temperature or noise log.

D. In conducting and evaluating the tests for mechanical integrity, the owner or operator and the Department shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Department, the owner or operator shall include a description of the test(s) and the method(s) used. In making the evaluation, the Department shall review monitoring and other test data submitted since the previous evaluation.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.10. Financial Responsibility Requirements for Class II and III Wells.**

The permittee shall maintain financial responsibility and resources, in the form of performance bonds or other equivalent forms of financial assurances approved by the Department, as specified in the permit, to close, plug, and abandon the injection operation.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.11. Classification and Regulation of Injection Wells.**

A. Class I.

(1) This class applies to industrial, municipal and other injection wells for disposing of fluids into the subsurface or ground water and includes:

- (a) Industrial disposal wells for disposing of waste other than hazardous or radioactive waste;
- (b) Municipal or privately owned disposal wells for disposing of domestic sewage or other waste not hazardous or radioactive.
- (c) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste;

(2) No person shall construct, operate or use a well of this Class for injection.

B. Class II.

(1) This Class applies to wells which inject fluids:

- (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part

of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; and,

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(2) No person shall construct, use, or operate a well of this Class for injection except as authorized by a permit issued by the Department. A mining permit issued by the Department may be necessary before petroleum exploration and/or production is initiated.

C. Class III.

(1) This Class applies to special process wells which use injection for extraction of minerals and includes but is not limited to:

(a) Mining of sulfur by the Frasch process;

(b) In-situ production of uranium or other metals;

(c) Solution mining of salts or potash;

(d) In-situ recovery of lignite, coal, tar sands, and oil shale.

(2) No person shall construct, use, or operate a well of this Class for injection except as authorized by a permit issued by the Department. A mining permit issued by the Department may be necessary before mineral extraction is initiated.

D. Class IV.

(1) This Class applies to injection wells for disposing of hazardous or radioactive waste into the subsurface or ground water and includes those injection wells used by:

(a) Generators of hazardous or radioactive wastes;

(b) Owners or operators of hazardous waste management facilities or radioactive waste disposal sites.

(2) No person shall construct, use or operate a well of this class for injection:

(a) Except owners or operators of contaminated ground water remedial systems treating groundwater to be injected into the same formation from which it was drawn are authorized by rule for the life of the well if subsurface emplacement of fluids is approved by EPA, or the Department, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601-9675, or pursuant to requirements and provisions under the Resource and Conservation Act (RCRA), 42 U.S.C. 6901-6992k;

(b) In violation of R61-87.5.

E. Class V.A.

(1) This Class applies to all injection wells not included in Class I, II, III, and IV and V.B. and includes but is not limited to:

(a) Drainage wells used to drain storm runoff into a subsurface formation;

(b) Recharge wells used to replenish the water in an aquifer;

(c) Salt-water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

(d) Subsidence control wells (Not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(e) Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined-out portions of subsurface mines;

(f) Injection wells associated with the recovery of geothermal energy of heating, aquaculture or production of electric power;

(g) Injection wells used in experimental technologies;

(h) Natural gas storage wells;

(i) Corrective action wells used to inject groundwater associated with aquifer remediation;

(j) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank;

(k) Large capacity cesspools including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes which have an open bottom and sometimes perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non residential cesspools which receive sanitary waste and have the capacity to serve fewer than 20 persons a day;

(l) Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities.

(2) No person shall construct, use or operate a well of this Class for injection:

(a) Except as authorized by a permit issued by the Department as provided by these regulations;

(b) In violation of R61-87.5.

(3) No person shall construct, use or operate:

(a) Large capacity cesspools including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes which have an open bottom and sometimes perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non residential cesspools which receive sanitary waste and have the capacity to serve fewer than 20 persons a day;

(b) Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities.

**F. Class V. B.**

(1) This Class applies to all injection wells used to return to the supply aquifer the water which has passed through a non-contact system and includes, but is not limited to:

(a) Heat pump return flow wells;

(b) Cooling water return flow wells.

(2) This Class is authorized by rule and does not require a permit, however, no person shall construct, use or operate a well of this Class for injection in violation of R61-87.5.

(3) Reporting requirements: All Class V. B. well owners or operators shall report to the Department no later than one year after the effective date of these regulations for existing wells of this Class, and no later than thirty days for new wells of this Class, on forms provided by the Department or on an alternative approved form the following information:

(a) Facility name and location description with direction and distance from two nearby map reference points;

(b) Name and mailing address of facility owner;

(c) Name and mailing address of facility operator;

(d) Nature and type of injection facility and well(s) including drawings of the surface and subsurface construction details of the well(s);

(e) Operating status of the injection facility and well(s).

(4) Failure to submit information to the Department regarding R.61-78(f)(3) will result in the prohibition from injecting until the reporting requirements are satisfied.

**HISTORY: Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 14, Issue No. 3, eff March 23, 1990; State Register Volume 24, Issue No. 11, eff November 24, 2000.**

**61-87.12. Abandonment, Monitoring and Reporting Requirements Applicable to Existing Injection Wells Used to Inject Waste or Contaminants.**

A. Any well, used for the injection of wastes or contaminants, and constructed or in operation prior to the effective date of these regulations, must be reported by the owner to the Department within thirty days after the effective date. The information shall include:

(1) Location of the injection well and any associated monitoring wells;

(2) Name and address of injection well owner;

- (3) Name and address of injection well operator;
- (4) Construction drawings of the injection well and injection systems to include depths, composition of construction, and injection system materials, etc.;
- (5) Analysis of injected fluid;
- (6) Date injection initially began;
- (7) Records of injection rates, pressures, volumes, etc. during the operating period of the well; and,
- (8) Background ground-water quality data.

B. Any Class II, III, IV(2)(a) or V.A. injection well constructed or in operation prior to the effective date of these regulations shall be permitted in accordance with R.61–87.13 or abandoned by the owner in a manner specified by the Department. Any Class I, Class IV (other than specified above), V.A.-(j), (k), (l) injection well constructed or in operation prior to the effective date of these regulations will be abandoned by the owner in a manner specified by the Department. As part of abandonment, the Department may require the owner to:

- (1) Install monitor wells in the injection zone and adjacent zones as necessary to detect the dispersion and migration of injection fluids within and from the injection zone;
- (2) Monitor the fluid levels and water quality in the injection and monitor wells at specified intervals;
- (3) Submit the results of monitoring at such frequencies and in such form as specified.

**HISTORY: Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 24, Issue No. 24, eff November 24, 2000.**

### **61–87.13. Permitting Requirements for Class II, III, IV(2)(a), and V. A. Wells.**

A. A permit shall be obtained from the Department prior to constructing, operating, or using any Class II, III, IV(2)(a) or V. A. well for injection.

B. All permit applications shall be signed as follows:

- (1) For a corporation: by a principal executive officer of at least the level of vice-president;
- (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or,
- (3) For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected official.

C. The person signing the application certifies the well will be operated in accordance with approved specifications and conditions of the permit.

D. All reports required by permits, other information requested by the Department, and all permit applications submitted for Class II wells under the UIC program shall be signed by a person described in paragraph B of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph B. of this section;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.);
- (3) The written authorization is submitted to the Department.

E. If an authorization under D. of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of D. of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

F. Any person signing a document under paragraphs B., D., or E. of this section shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

G. An application shall be submitted in triplicate to the Department on forms furnished by the Department and shall include the following:

(1) Class II and III Wells;

(a) The activities conducted by the applicant which require it to obtain a permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) Up to four Standard Industrial Codes which best reflect the principal products or services provided by the facility.

(d) The owner's and (if different than the owner) operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(e) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA;

(ii) UIC program under SDWA;

(iii) NPDES programs under CWA;

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(v) Nonattainment program under the Clean Air Act;

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(viii) Dredge or fill permits under section 404 of CWA;

(ix) Other relevant environmental permits, including State permits.

(f) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; each well where fluids from the facility are injected underground; and other wells, springs, surface water bodies, mines (surface and subsurface), and quarries in the map area.

(g) A brief description of the nature of the business.

(h) A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map shall show the name and location of all producing wells, injection wells, abandoned wells, dry wells, and water wells. The map shall also show faults, or other geological discontinuities if known or suspected.

(i) A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under paragraph (h) of this section which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Department may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Department may elect to only require data on a representative number of wells.

(j) Illustrations (maps, cross-sections, fence diagrams) prepared by a geologist showing:

(i) The regional geologic setting;

(ii) The detailed hydrogeologic structure of the local area;

(iii) The vertical and lateral limits of all underground sources of drinking water, confining zones, and injection zones within the area of review, their position relative to the injection

formation and the direction of water movement in every underground source of drinking water and injection zone which may be affected by the proposed injection.

(k) Proposed operating data as follows:

- (i) Average and maximum daily rate and volume of fluid to be injected;
- (ii) Average and maximum injection pressure; and
- (iii) Source and a qualitative analysis and ranges in concentrations of the constituents in the injected fluid;

(l) Proposed formation testing program.

(m) Proposed stimulation program.

(n) Proposed injection procedure.

(o) Drawings of the surface and subsurface construction details of the well.

(p) Plans for meeting the monitoring requirements for the Class proposed.

(q) Expected changes in pressure, formation fluid displacement, and direction of movement of injected fluid.

(r) Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into underground sources of drinking water.

(s) A plan for plugging and abandonment that will prevent the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another.

(t) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon the well as required by these regulations.

(u) The corrective action proposed to be taken as required by these regulations.

(2) Class IV(2)(a) and Class V. A. Wells;

(a) The activities conducted by the applicant which require it to obtain a permit.

(b) Name, mailing address, and location of the facility for which the application is submitted.

(c) The owner's and (if different than the owner) operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(d) A brief description of the nature of the business.

(e) Proposed operating data as follows:

- (i) Average and maximum daily rate and volume of fluid to be injected;
- (ii) Average and maximum injection pressure; and
- (iii) Source and an analysis of the chemical, physical, biological and radiological characteristics of the injected fluid.

(f) Drawings of the surface and subsurface construction details of the well.

H. All applications for a new permit and renewal or transfer of an existing permit shall be filed in sufficient time prior to commencement of well construction, or transfer to allow compliance with all legal procedures.

I. If the Department finds the application is complete, the Department shall prepare a draft permit or issue a notice of intent to deny the application. If the Department finds that the tentative decision to deny or terminate was incorrect, the Department shall withdraw the notice of intent and prepare a draft permit.

J. The Department shall prepare a Statement of Basis for each notice of intent to deny or terminate, and for each draft permit for non-major facilities. A Fact Sheet shall be prepared for each draft permit for a major facility and for each draft permit which the Department finds is the subject of widespread public interest. The Statement of Basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. Fact Sheets prepared when applicable shall include:

- (1) A brief description of the type of facility or activity which is the subject of the draft permit;
- (2) The type and quantity of fluids which are proposed to be injected;
- (3) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;
- (4) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (5) Name and telephone number of a person to contact for additional information; and,
- (6) A description of the procedures for reaching a final decision on the draft permit including:
  - (a) The beginning and ending dates of the public comment period and the address where comments will be received;
  - (b) Procedures for requesting a hearing and the nature of that hearing; and,
  - (c) Any other procedures by which the public may participate in the final decision.

K. The Department will issue a public notice when any of the following actions have occurred:

- (1) A permit action has been tentatively denied;
- (2) A draft permit has been prepared;
- (3) A public hearing has been scheduled; or,
- (4) An appeal has been granted.

L. The contents of the public notice will include:

- (1) Name, address and phone number of the office processing the permit action;
- (2) Name and address of each applicant whose application is being considered;
- (3) A brief discussion of the business conducted at the facility;
- (4) Name, address and phone number of person from whom interested person may obtain additional information;
- (5) The purpose of the hearing;
- (6) Reference to the date of previous public notices relating to the permit; and,
- (7) A brief description of the comment procedures and the date, time, and place of any hearing that will be held, including procedures to request a hearing.

M. The public notice shall allow at least thirty days for public comment.

N. No public notice will be issued for Class V.B. Wells or non-major Class V.A. Wells. No public notice will be issued for other classes of wells when a request for permit modification, revocation and reissuance, or termination is denied. In such cases, written notice only will be given to the requestor and permittee.

O. The Department will hold a public hearing whenever the Department finds, on the basis of requests, a significant degree of public interest in draft permits and whenever such hearing might clarify one or more issues involved in the permit decision. Public notice of a public hearing may be given at the same time as public notice of a draft permit and the two notices combined.

P. Public notices will be circulated in the geographical area of the proposed facility at least thirty days prior to the date of the hearing:

- (1) By posting a copy of the notice at the Courthouse in the county in which the facility is located;
- (2) By publishing the notice three times in a newspaper having general circulation in the said county;
- (3) By mailing to all appropriate government agencies;
- (4) By mailing to any person or group upon request; and,
- (5) By mailing a copy to all persons on the Department's mailing lists for receiving such notices.

Q. The Department shall issue a final permit decision after the close of the public comment period. A final permit decision shall become effective thirty days after serving notice of the final decision to the applicant and each person who has submitted written comments or requested notice of the final permit decision; unless:

- (1) A later date is specified by the Department; or,
- (2) A participant in the public hearing or public review process petitions the decision within thirty days after the final decision is issued; or,
- (3) No comments requested a change in the draft permit, in which case the permit shall become final upon issuance.

R. The Department will respond to comments received at the time a final permit is issued. The response will be made available to the public and include:

- (1) Which provisions, if any, of the draft permit have been changed in the final permit decision and the reasons for the changes; and,
- (2) A description and response to all significant comments on the draft permit raised during the public comment period or during any hearing.

S. All records, reports and information required to be submitted to the Department; public comment on these records, reports or information; and the draft and final permits shall be disclosed to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets. The Department shall determine which information is entitled to confidential treatment. In the event the Department determines that such information is entitled to confidential treatment, the Department shall take steps to protect such information from disclosure. The Department shall submit the information considered to be confidential in the Department's determination of confidentiality.

T. The Department shall:

- (1) Provide facilities for the inspection of information relating to UIC permit applications and permits;
- (2) Ensure the employees handle requests for such inspections promptly; and,
- (3) Ensure that copying machines or devices are available for a reasonable fee.

U. Injection may not commence until construction is complete, the permittee has submitted notice of completion of construction to the Department, and the Department has inspected or otherwise reviewed the injection well and finds it in compliance with these regulations.

- (1) Prior to granting approval for the operation of any injection well, the Department shall require a satisfactory demonstration of mechanical integrity pursuant to these regulations.
- (2) Prior to granting approval for the operation of any injection well, the Department shall consider the following information when such information is required by these regulations:
  - (a) All available logging and testing data on the well;
  - (b) The proposed operating procedures;
  - (c) The results of the formation testing program; and,
  - (d) The status of corrective action on defective wells in the area of review.

V. The Department may establish maximum injection volumes and pressures and such other permit conditions as necessary to assure that fractures are not initiated in the confining zone adjacent to an underground source of drinking water; that injected fluids do not migrate into underground sources of drinking water; that formation fluids are not displaced into any underground sources of drinking water; and to assure compliance with operating requirements.

W. A permit shall be issued for a period not to exceed ten years from the date of issuance for a Class IV(2)(a) and Class V. A. wells. On expiration of the permit, the permit shall become invalid unless a complete application is made, prior to the expiration date, for a renewal of the subject permit. For Class II and III wells the permit shall be issued for a period up to the operating life of the facility. The Department shall review each issued Class II or III U.I.C. permit at least once every five years to determine whether it should be modified, revoked and reissued, or terminated.

X. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision

requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(1) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(2) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(3) The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.

(4) The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(5) Monitoring results shall be reported at the intervals specified elsewhere in the permit.

(6) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

(7) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

Y. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(1) Causes for permit modification or revocation and reissuance:

(a) There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit;

(b) The Department has received information not available at the time of permit issuance that would have justified application of different permit conditions at the time of issuance. This cause shall include any information indicating that cumulative effects on the environment are unacceptable;

(c) The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. The Department may determine good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonable available remedy.

(2) The Department may terminate a permit during its term or deny a permit renewal application for the following causes:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit termination.

(d) The Department shall follow the procedures as prescribed in § 48-1-50 of the 1976 South Carolina Code of laws.

Z. The permit does not convey any property rights of any sort, or any exclusive privilege.

AA. The permittee shall furnish to the Department any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Department, upon request, copies of records required by the permit to be kept.

BB. The permittee shall allow the Department, or an authorized representative, upon their presentation of credentials to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and,

(4) Sample or monitor, at reasonable times, for the purposes of assuring permit compliances or as otherwise authorized, any substances or parameters.

CC. The permittee shall:

(1) Retain copies of records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended up to five years by request of the Department at any time. Records of monitoring information shall include:

- (a) The date, exact place, and time of sampling or measurements;
- (b) The individual(s) who performed the sampling or measurements;
- (c) The date(s) analyses were performed;
- (d) The individual(s) who performed the analyses;
- (e) The analytical techniques or methods used; and,
- (f) The results of any such sampling, measurements and analyses.

(2) Retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment. The Department may require the owner or operator to deliver the records to the Department at the conclusion of the retention period.

DD. The permit shall not be transferable to any person except after notice to and approval by the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be appropriate.

EE. The permittee shall report any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water and any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between underground sources of drinking water. The permittee shall immediately stop injection upon determination that the injection system has malfunctioned and could cause fluid migration into or between underground sources of drinking water. The permittee shall not restart the injection system until the malfunction has been corrected and written approval is issued by the Department. The information shall be provided, to the Department, orally within eight hours of the occurrence. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the cause for the noncompliance has not been corrected, the anticipated time required for correction, and any steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

**HISTORY: Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 14, Issue No. 3, eff March 23, 1990; State Register Volume 24, Issue No. 11, eff November 24, 2000.**

#### **61-87.14. Criteria and Standards for Class II, III, IV(2)(a) and V.A. Wells.**

A. All Class II and III wells shall be sited in such a fashion that they inject into a formation which is separated from any Underground Sources of Drinking Water by a confining zone that is free of known open faults or fractures, or other geological discontinuities within the area of review.

B. All Class II and III injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well.

(1) In determining and specifying casing and cementing requirements, the following factors shall be considered:

- (a) Depth to the injection zone;

- (b) Depth to the bottom of all Underground Sources of Drinking Waters; and,
- (c) Estimated maximum and average injection pressures.
- (2) In addition, the Department may consider information on:
  - (a) Corrosiveness of injected fluids and the physical and chemical characteristics of formation fluids;
  - (b) Lithology of injection and confining zones;
  - (c) External pressure, internal pressure, and axial loading;
  - (d) Hole size; (depth, diameter)
  - (e) Size and grade of all casing strings; and,
  - (f) Type and grade of cement and additives.

C. Appropriate logs and other tests shall be conducted during drilling and construction. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to an Underground Source of Drinking Water and the confining zone adjacent to it, and the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the Department. At a minimum, these logs and tests shall include:

- (1) Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
- (2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Department in setting logging and testing requirements:
  - (a) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined:
    - (i) Electric and caliper logs before casing is installed; and,
    - (ii) A cement bond, temperature, or density log after the casing is set and cemented.
  - (b) For intermediate and long strings of casing intended to facilitate injection:
    - (i) Electric, porosity and gamma ray logs before the casing is installed;
    - (ii) Fracture finder log; and,
    - (iii) A cement bond, temperature, or density log after the casing is set and cemented.

D. At a minimum, the following information concerning the injection formation shall be determined or calculated:

- (1) Fluid pressure;
- (2) Estimated fracture pressure;
- (3) Physical and chemical characteristics of the injection zone.

E. Operating Requirements. Operating requirements shall, at a minimum specify that:

- (1) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the Underground Sources of Drinking Waters. In no case shall injection pressure cause the movement of injection or formation fluids into an underground source of drinking water.
- (2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

F. Monitoring Requirements for Class II Wells. Monitoring requirements shall, at a minimum, include:

- (1) Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;

(2) Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

- (a) Weekly for produced fluid disposal operations;
- (b) Monthly for enhanced recovery operations;
- (c) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and,
- (d) Daily during the injection phase of cyclic steam operations; And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than thirty days.

(3) A demonstration of mechanical integrity at least once every five years during the life of the injection well;

(4) Maintenance of the results of all monitoring until the next permit review; and,

(5) Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

G. Monitoring Requirements for Class III, IV(2)(a) and V.A. Wells.

(1) An appropriate number of monitoring wells shall be completed into the injection zone and into any underground sources of drinking water which could be affected by the injection operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the injection area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

(2) In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

- (a) The population relying on the USDW affected or potentially affected by the injection operation;
- (b) The proximity of the injection operation to points of withdrawal of drinking water;
- (c) The local geology and hydrology;
- (d) The operating pressures and whether a negative pressure gradient is being maintained;
- (e) The nature and volume of the injected fluid, the formation water, and the process by-products; and
- (f) The injection well density.

(3) Monitoring requirements shall, at a minimum, specify:

- (a) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics;
- (b) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;
- (c) Demonstration of mechanical integrity at least once every five years during the life of the well;
- (d) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells semi-monthly; and,
- (e) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

H. Reporting Requirements for Class II Wells.

(1) Reporting requirements include a quarterly report to the Department summarizing the results of monitoring required. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.

(2) Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

I. Reporting Requirements for Class III and Class V.A. Wells. Reporting requirements include:

(1) Quarterly reporting to the Department on required monitoring;

(2) Results of mechanical integrity and any other periodic test required by the Department reported with the first regular quarterly report after the completion of the test; and

(3) Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 24, Issue No. 11, eff November 24, 2000.

### **61-87.15. Plugging and Abandonment Requirements for Injection Wells.**

A. Prior to the plugging or abandonment of any injection well the permittee shall:

(1) Provide advance notice of 180 days to the Department;

(2) Submit a revised plugging and abandonment plan to the Department which shall include:

(a) The type and number of plugs to be used;

(b) The type, grade and quantity of cement to be used;

(c) The proposed location in the well of each plug including the elevation of the top and bottom;

(d) A description of the placement method for the plugs. (Placement of the cement plugs shall be by the balance method, the dump bailer method, the two-plug method, or an alternative method approved by the Department which will reliably provide a comparable level of protection to underground sources of drinking water.)

(e) Well construction design details.

B. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, by a method prescribed by the Department prior to the placement of the cement plug(s).

C. Prior to granting final approval to abandon an injection well, the permittee shall demonstrate to the satisfaction of the Department that the well has been plugged in such a manner which will not allow the movement of fluids either into or between underground sources of drinking water.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-87.16. Violations and Penalties.**

A. Any person or persons violating these regulations shall be subject to the penalties provided in Section 48-1-320 and Section 48-1-330, of the 1976 Code of Laws as amended.

B. The Department will:

(1) Investigate all citizen complaints;

(2) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(3) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action. Where the violation(s) poses an imminent and/or substantial hazard to the health of persons or to the environment, the Department may waive this requirement.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983.

### **61-88. Repealed.**

**HISTORY:** Former Regulation, titled Charges for Maternal and Child Health Services, had the following history: Added by State Register Volume 6, Issue No. 12, eff December 24, 1982. Repealed by State Register Volume 40, Issue No. 6, Doc. No. 4608, eff June 24, 2016.

**61–89.** Repealed.

**HISTORY:** Former Regulation, titled Charges for Family Planning Services, had the following history: Added by State Register Volume 6, Issue No. 12, eff December 24, 1982. Repealed by State Register Volume 40, Issue No. 6, Doc. No. 4607, eff June 24, 2016.

**61–91. STANDARDS FOR LICENSING AMBULATORY SURGICAL FACILITIES.**

(Statutory Authority: §976 Code Section 44–7–260)

**Editor's Note**

Unless noted otherwise, the following constitutes the history for 61–91, 101 to 2701.

**HISTORY:** Added by State Register Volume 7, Issue No. 6, eff June 24, 1983. Amended by State Register Volume 27, Issue No. 6, Part 1, eff June 27, 2003; State Register Volume 34, Issue No. 6, eff June 25, 2010.

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## SECTION 100

### DEFINITIONS, REFERENCES, AND LICENSE REQUIREMENTS

#### **101. Definitions.**

For the purpose of these standards, the following definitions shall apply:

- A. Administrator. The individual designated by the facility licensee to have the authority and responsibility to manage the facility.
- B. Administering Medication. The direct application of a single dose or multi-dose of medication to the body of a patient by injection, ingestion, or any other means.
- C. Advance Directive. A written statement such as a living will, a durable power of attorney for health care, or a do-not-resuscitate order relating to the provision of health care when the individual is incapacitated. The exercise by a patient of self-determination that encompasses making choices regarding life-sustaining treatment (including resuscitative services).
- D. Advanced Practice Registered Nurse. An individual who has official recognition as such by the S.C. State Board of Nursing.
- E. Ambulatory Surgical Facility. A facility organized and administered for the purpose of performing surgical procedures and/or endoscopy for which patients are scheduled to arrive, receive surgery, and be discharged on the same day.
  - 1. The owner or operator shall make the facility available to other providers who comprise an organized professional staff, *i.e.*, an open medical staff (see Section 101.BB).
  - 2. This definition does not apply to any facility used as an office or clinic for the private practice of licensed healthcare professionals (see Section 101.JJ).
- F. Anesthesiologist's Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.
- G. Anesthesiologist. A physician who has completed a residency in anesthesiology.
- H. Anesthetic Agent. Any drug or combination of drugs administered parenterally or inhaled with the purpose of creating conscious or deep sedation.
- I. Certified Nursing Assistant. A person whose duties are assigned by a licensed nurse and who has successfully completed a state-approved training program or course with a curriculum prescribed by the South Carolina Department of Health and Human Services, holds a certificate of training from that program or course and is listed on the South Carolina Registry of Certified Nurse Aides.
- J. Certified Registered Nurse Anesthetist. A registered nurse who is authorized to practice as a certified registered nurse anesthetist by the S. C. State Board of Nursing.
- K. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act and the S.C. Controlled Substances Act.
- L. Consultation. A visit by Department representatives who will provide information to the licensee in order to facilitate compliance with these regulations.

- M. Dentist. An individual currently licensed by the S.C. Board of Dentistry to practice dentistry.
- N. Department. The S.C. Department of Health and Environmental Control (DHEC).
- O. Direct Care Staff Member. An individual who provides care, treatment, surgery, and/or services, or performs procedures for a patient.
- P. Endoscopy. Visual inspection of any cavity of the body by means of an endoscope.
- Q. Existing Facility. A facility that was in operation and/or one that began the construction or renovation of a building, for the purpose of operating the facility, prior to the promulgation of this regulation. The licensing standards governing new facilities apply if and when an existing facility is not continuously operated and licensed under this regulation.
- R. Facility. An ambulatory surgical facility licensed by the Department.
- S. Health Assessment. An evaluation of the health status of a staff member or volunteer by a physician, physician assistant, or advanced practice registered nurse, or by a registered nurse, pursuant to standing orders approved by a physician, as evidenced by the physician's signature in accordance with facility policy.
- T. Inspection. A visit by Department representative(s) for the purpose of determining compliance with this regulation.
- U. Investigation. A visit by Department representative(s) to a licensed or unlicensed entity for the purpose of determining the validity of allegations received by the Department relating to this regulation.
- V. Initial License. A license granted to a new facility.
- W. Legally Authorized Healthcare Provider. An individual authorized by law and currently licensed in S.C. to provide specific medical care, treatment, procedures, surgery, and/or services to patients. Examples of individuals who may be authorized by law to provide the aforementioned care, treatment, procedures, surgery, and/or services may include, but are not limited to, advanced practice registered nurses, and physician assistants.
- X. Legend Drug.
1. A drug required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:
    - a. "Caution: Federal law prohibits dispensing without prescription";
    - b. "Rx only."
  2. A drug required by federal or state law to be dispensed pursuant to a prescription drug order or restricted to use by practitioners only;
  3. Any drug products designated by the S.C. Board of Pharmacy to be a public health threat; or
  4. Any prescribed compounded prescription within the meaning of the Pharmacy Act.
- Y. License. A certificate issued by the Department to an Ambulatory Surgical Facility to provide care, treatment, procedures, surgery, and/or services.
- Z. Licensed Nurse. An individual currently licensed by the S.C. State Board of Nursing as a registered nurse or licensed practical nurse.
- AA. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care, treatment, procedures, surgery, and/or services at a facility and with whom rests the ultimate responsibility for compliance with this regulation.
- BB. New Facility. All buildings or portions of buildings, new and existing, that are:
1. Being licensed for the first time;
  2. Providing a different service that requires a change in the type of license;
  3. Being licensed after the previous licensee's license has been revoked, suspended, or after the previous licensee has voluntarily surrendered the license and the facility has not continuously operated.
- CC. Open Medical Staff. Members of the medical staff, which includes physicians, dentists, or podiatrists, of an ambulatory surgical facility, that have individually submitted application to the

facility, and subsequently been approved to perform surgery/procedures in accordance with criteria established by the facility for approving qualified applicants.

DD. Operating Room. A room in which surgery is performed.

EE. Nonlegend Medication. A medication that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the laws of this State and the Federal government.

FF. Pharmacist. An individual currently registered as such by the S.C. Board of Pharmacy.

GG. Physical Examination. An examination of a patient by a physician or physician assistant that addresses those issues identified in Section 802 of this regulation.

HH. Physician. An individual currently licensed as such by the S.C. Board of Medical Examiners.

II. Physician Assistant. An individual currently licensed as such by the S.C. Board of Medical Examiners.

JJ. Podiatrist. An individual currently licensed as such by the S.C. Board of Podiatry Examiners.

KK. Private Practice. An individually-licensed physician or group of licensed physicians who practice together at a certain location/address in a legally-constituted professional corporation, association, or partnership; patient encounters in the office or clinic are for the purpose of diagnosis and treatment, and not limited primarily to the performance of surgery and related care, treatment, procedures, and/or services.

LL. Procedure Room. A room where procedures not requiring general anesthesia can be safely performed.

MM. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care, treatment, procedures, surgery, and/or services, identify the ways to improve its performance, and take actions that result in higher quality of care, treatment, procedures, surgery, and/or services for the facility's patients.

NN. Recovery Area. An area used for the recovery of patients.

OO. Repeat Violation. The recurrence of a violation cited under the same section of the regulation within a 36-month period. The time-period determinant of repeat violation status is not interrupted by ownership changes.

PP. Responsible Party. A person who is authorized by law to make decisions on behalf of a patient, including, but not limited to, a court-appointed guardian or conservator, or person with a health care power of attorney or other durable power of attorney.

QQ. Revocation of License. An action by the Department to cancel or annul a license by recalling, withdrawing, or rescinding its authority to operate.

RR. Same Day. A period of time not to exceed twenty-four (24) hours after admission.

SS. Staff Member. An adult who is a compensated employee of the facility on either a full or part-time basis.

TT. Surgery. Treatment of conditions by operative means involving incision, whether with a scalpel or a laser, followed by removal or repair of an organ or other tissue.

UU. Surgical Suite. An area that includes one or more operating rooms and a recovery area.

VV. Surgical Technologist. An individual who meets one of the requirements listed in 1976 Code Section 44-7-380(B)(1)(a) - (d) to practice surgical technology in South Carolina.

WW. Suspension of License. An action by the Department requiring a facility to cease operation for a period of time or to require a facility to cease admitting patients until such time as the Department rescinds that restriction.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **102. References.**

The following publications/standards are referenced in this regulation:

A. Departmental:

1. R.61-4, *Controlled Substances*;

2. R.61–12, *Standards for Licensing Abortion Clinics*;
  3. R.61–16, *Standards for Licensing Hospitals and Institutional General Infirmaries*;
  4. R.61–20, *Communicable Diseases*;
  5. R.61–25, *Retail Food Establishments*;
  6. R.61–58, *State Primary Drinking Water Regulations*;
  7. R.61–63, *Title A, Rules and Regulations for Radioactive Materials*;
  8. R.61–64, *X-Rays, (Title B)*;
  9. R.61–67, *Standards for Wastewater Facility Construction*;
  10. R.61–105, *Infectious Waste Management Regulations*;
  11. Guidelines for Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings.
- B. Non-Departmental:
1. American Association of Blood Banks;
  2. American National Standards Institute (ANSI);
  3. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE);
  4. Bloodborne Pathogens Standards, Occupational Safety and Health Act (OSHA) of 1970;
  5. Civil Rights Act of 1964;
  6. Centers for Disease Control and Prevention (CDC);
  7. International Building Code (IBC);
  8. National Fire Protection Association (NFPA);

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **103. License Requirements (II).**

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise/market) as an ambulatory surgical facility in S.C. without first obtaining a license from the Department. No such party shall provide care, treatment, procedures, surgery, and/or services to patients prior to the effective date of licensure. Upon the Department's determination that such party provides care, treatment, procedures, surgery, and/or services without a Department-issued license, the party shall cease operation immediately and ensure safety, health, and well-being of the patients. Current or previous violations of the S.C. Code and/or Department regulations may jeopardize the issuance of a license or licensing of another facility or addition to an existing facility owned or operated by the violating licensee. (I)

B. Compliance. An initial license shall not be issued to a proposed facility that has not been previously and continuously licensed under Department regulations until the licensee has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility/activity licensed by the Department makes application for another facility or increase in licensed capacity, the currently licensed facility/activity shall be in substantial compliance with the applicable standards prior to the Department issuing a license to the proposed facility or an amended license to the existing facility. A copy of the licensing standards shall be maintained at the facility and accessible to all staff members. Facilities shall comply with applicable local, state, and federal laws, codes, and regulations.

C. Compliance with Structural Standards. Facilities possessing a license issued prior to January 1, 2016 are considered in compliance with Section 1703 without modification of its licensed structure.

D. Licensed Capacity. No facility that has been licensed for a set number of operating rooms or procedure rooms shall exceed that number of operating or procedure rooms or establish new care, treatment, procedures, surgery, and/or services without first obtaining authorization from the Department. (I)

E. Issuance and Terms of License.

1. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility.

2. The issuance of a license does not guarantee adequacy of individual care, treatment, procedures, surgery, and/or services, personal safety, fire safety, or the well-being of any patient or occupant of a facility.

3. A license is not assignable or transferable and is subject to revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State.

4. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status.

5. Facilities owned by the same entity but not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, *e.g.*, interstate highways, shall not be considered as dividing otherwise adjoining or contiguous property.

6. Separate licenses are not required, but may be issued, for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

7. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

8. A facility shall provide only the care, treatment, procedures, surgery, and/or services of which it is capable and equipped to provide, and has been authorized by the Department to provide pursuant to the definition in Section 101.E of this regulation.

9. Abortions shall not be performed in an ambulatory surgical facility unless it is also licensed as an abortion clinic pursuant to R.61-12.

F. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in S.C. The Department shall determine if names are similar. If the facility is part of a "chain operation" it shall then have the geographic area in which it is located as part of its name.

G. Application. Applicants for a license shall submit to the Department a completed application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes the applicant's oath, assuring that the contents of the application are accurate and true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two of its officers; or in the case of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his or her address is different from that of the facility, and the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with these regulations. Corporations or partnerships shall be registered with the S.C. Office of the Secretary of State.

H. Fees. The initial and annual license fee shall be \$150.00 per operating/procedure room or \$600.00, whichever is greater. Such fee shall be made payable by check or money order to the Department and is not refundable. The Department may charge a fee for plan reviews, construction inspections and licensing inspections.

I. Late Fee. Failure to submit a renewal application after the license expiration date may result in a late fee of 25% of the licensing fee amount, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time-period specified by the Department may result in an enforcement action.

J. License Renewal. To renew a license, an applicant shall file an application with the Department and pay a license fee. If the license renewal is delayed due to enforcement action, the renewal license shall be issued only when the matter has been resolved satisfactorily by the Department or when the adjudicatory process is completed, whichever is applicable. If an application is denied, a portion of the fee shall be refunded based upon the remaining months of the licensure year.

K. Change of License.

1. A facility shall request issuance of an amended license by application to the Department prior to any of the following circumstances:

a. Change of ownership;

- b. Reallocation of types of operating or procedure rooms as shown on the license;
  - c. Change of facility location from one geographic site to another;
  - d. The addition or replacement of a surgical suite or any part thereof, or the deletion of operating or procedure rooms.
2. Changes in facility name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee.
- L. An ambulatory surgical facility license shall not be required for, nor shall such a license be issued to:
- 1. Facilities operated by the federal government;
  - 2. Ambulatory surgical services or procedures provided in licensed hospitals (such services remain within the purview of R.61-16);
  - 3. Private practices (see Section 101.JJ).
- M. Exceptions to Licensing Standards. The Department has the authority to make exceptions to these standards where it is determined that the health, safety, and well-being of the patients are not compromised, and provided the standard is not specifically required by statute.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## SECTION 200

### ENFORCING REGULATIONS

#### **201. General.**

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

#### **202. Inspections/Investigations.**

A. An inspection shall be conducted prior to initial licensing of a facility and subsequent inspections conducted as deemed appropriate by the Department. Other regulatory-related inspections may be considered in determining the appropriateness of Department inspections, e.g., Joint Commission on Accreditation of Health Care Organizations (JCAHO), Accreditation Association for Ambulatory Health Care (AAAHC), American Osteopathic Association (AOA), American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) inspections.

B. All facilities are subject to inspection or investigation at any time without prior notice by individuals authorized by the Department.

C. Individuals authorized by the Department shall be granted access to all properties and areas, objects, and records, and have the authority to require the facility to make photocopies of those documents required in the course of inspections or investigations. Photocopies shall be used for purposes of enforcement of regulations and confidentiality shall be maintained except to verify the identity of individuals in enforcement action proceedings. (II)

D. A facility found noncompliant with the standards of this regulation shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection or investigation. The written plan of correction shall describe: (II)

- 1. The actions taken to correct each cited deficiency;
- 2. The actions taken to prevent recurrences (actual and similar);
- 3. The actual or expected completion dates of those actions.

E. Reports of inspections or investigations conducted by the Department, including the facility response, shall be made available upon written request with the redaction of the names of those individuals in the report as provided by § 44-7-310 and 315 of the S.C. Code Ann. (2002).

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## SECTION 300

### ENFORCEMENT ACTIONS

#### **301. General.**

When the Department determines that a facility is in violation of any statutory provision, rule, or regulation relating to the operation or maintenance of such facility, the Department, upon proper notice to the licensee, may impose a monetary penalty and/or deny, suspend, and/or revoke its license.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **302. Violation Classifications.**

Violations of standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health, safety, or well-being of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. Each day such violation exists after expiration of this time established by the Department may be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a negative impact on the health, safety, or well-being of persons in the facility. The citation of a Class II violation may specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time may be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation may specify the time within which the violation is required to be corrected. Each day such violation exists after expiration of this time may be considered a subsequent violation.

D. The notations “(I)” or “(II)”, placed within sections of this regulation, indicate that those standards are considered Class I or II violations, if they are not met, respectively. Standards not so annotated are considered Class III violations.

E. In arriving at a decision to take enforcement actions, the Department shall consider the following factors: specific conditions and their impact or potential impact on health, safety, or well-being of the patients; efforts by the facility to correct cited violations; behavior of the licensee that reflects negatively on the licensee’s character, such as illegal or illicit activities; overall conditions; history of compliance; and any other pertinent factors that may be applicable to current statutes and regulations.

F. When a decision is made to impose monetary penalties, the following schedule shall be used as a guide to determine the dollar amount:

**Frequency of violation  
of standard within a  
36-month period:**

#### **MONETARY PENALTY RANGES**

<b>FREQUENCY</b>	<b>CLASS I</b>	<b>CLASS II</b>	<b>CLASS III</b>
<b>1<sup>st</sup></b>	\$ 500 - 1,500	\$ 300 - 800	\$ 100 - 300
<b>2<sup>nd</sup></b>	1,000 - 3,000	500 - 1,500	300 - 800
<b>3<sup>rd</sup></b>	2,000 - 5,000	1,000 - 3,000	500 - 1,500
<b>4<sup>th</sup></b>	5,000	2,000 - 5,000	1,000 - 3,000
<b>5<sup>th</sup></b>	7,500	5,000	2,000 - 5,000
<b>6<sup>th</sup></b>	10,000	7,500	5,000

G. Any enforcement action taken by the Department may be appealed in a manner pursuant to the Administrative Procedures Act, 1976 Code Section 1-23-310, *et seq.*

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 400

### POLICIES AND PROCEDURES

#### **401. General (II).**

A. Policies and procedures addressing each section of this regulation regarding care, treatment, procedures, surgery, and/or services, rights, and the operation of the facility shall be developed and implemented, and revised as required in order to accurately reflect actual facility operation. The licensee shall establish a time-period for review of all policies and procedures. These policies and procedures shall be accessible in each facility at all times, either by hard copy or electronically.

B. Policies and procedures shall describe the means by which the facility shall assure that the standards described in this regulation that the licensee has agreed to meet, as confirmed by signature on the application for licensing, will be met (see Section 1601.B).

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 500

### STAFF

#### **501. General (II).**

A. A facility shall be fully staffed in sufficient numbers and training as required by this Section at all times a patient is in the facility or the facility is open to accept patients, in order to:

1. Effectively meet the needs and condition of the patients, to include the demands of effective emergency on-site action that might arise;
2. Properly operate equipment in accordance with the equipment manufacturer's recommendations;
3. Adhere to current professional organizational standards;
4. Comply with all local, state, and federal laws.

B. The facility shall provide additional staff members if the Department determines that the facility staff on duty is inadequate to provide appropriate care, treatment, procedures, surgery, and/or services to the patients of a facility.

C. All staff members shall be assigned duties and responsibilities in accordance with the individual's capability that shall be in writing and be reviewed on an annual basis by the staff member and supervisor.

D. There shall be accurate current information maintained regarding all staff members of the facility, to include at least an address, phone number, and health and personal/work/training background. For those staff members who are licensed/certified, a copy of the license/certificate shall be available for review.

E. Direct care staff members of the facility shall not have a prior conviction or have pled no contest (nolo contendere) within the last 10 years for child or adult abuse, neglect, exploitation, or mistreatment, or for sexual assault or assault with a deadly weapon. Facilities may take certain considerations into account regarding criminal records when making hiring decisions, *i.e.*, discretion may be exercised regarding convictions/nolo contendere pleas occurring more than 10 years ago and may determine that an applicant, who would otherwise be disqualified, could be hired. (I)

F. A staff member shall not have an active dependency on a psychoactive substance(s) that would impair his or her ability to perform assigned duties. (I)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **502. Administrator (II).**

A. The facility shall have an administrator who shall be capable of meeting the responsibilities of operating the facility to ensure that it is in compliance with these regulations, and shall demonstrate adequate knowledge of these regulations. An administrator appointed subsequent to the promulgation

of this regulation shall be a registered nurse or shall have a baccalaureate or associate degree with at least three years experience in a health-related field within the past five years.

B. A staff member shall be designated, by name or position, in writing, to act in the absence of the administrator.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **503. Medical Director (II).**

A. There shall be a medical director of the facility who is a physician.

B. The administrator and medical director may be the same individual.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **504. Medical Staff (I).**

A. Physicians, dentists, and podiatrists performing surgery and/or procedures shall be appropriately licensed to perform these functions as well as adequately trained in any special requirements that are necessary to perform such surgery/procedures.

B. Privileges for each physician, dentist, and podiatrist performing surgery/procedures shall be in accordance with criteria that the facility has established and approved.

C. There shall be a roster of medical staff having surgery, procedures, and anesthesia privileges at the facility, specifying the privileges and limitations of each and a current listing of all types of surgery and/or procedures offered by the facility.

D. A physician shall be physically present or available within 30 minutes until all patients have departed the premises.

E. There shall be at least one physician on staff who has admitting privileges at one or more hospitals.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **505. Nursing Staff (I).**

A. An adequate number of licensed nurses shall be on duty to meet the total nursing needs of patients.

B. At least one registered nurse shall be on duty whenever patients are present in the facility.

C. Nursing staff shall be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **506. Advanced Cardiac Life Support (I).**

An individual who possesses a valid Advanced Cardiac Life Support credential shall be on duty in the facility whenever patients are present in the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **507. Inservice Training (II).**

A. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, surgery, and/or services delineated in Sections 501.A and 800.

B. The following training shall be provided to staff members by appropriate resources, *e.g.*, licensed or registered persons, video tapes, books, *etc.*, to all staff members in context with their job duties and responsibilities, prior to patient contact and at a frequency determined by the facility, but at least annually:

1. Cause, effect, transmission, prevention, and elimination of infections, to include management and care of persons with contagious and/or communicable disease, *e.g.*, hepatitis, tuberculosis, HIV infection;
2. OSHA standards regarding bloodborne pathogens;
3. Confidentiality of patient information and records and the protection of patient rights;

4. Emergency procedures and disaster preparedness within 24 hours of their first day on the job in the facility (see Section 1200).

5. Fire response training within 24 hours of their first day on the job in the facility (see Section 1303);

6. Aseptic techniques such as handwashing and scrubbing practices, proper gowning and masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies.

C. All licensed nurses shall possess a valid cardio-pulmonary resuscitation (CPR) certificate within three months from the first day on the job in the facility; a staff member with a valid CPR certificate shall be on duty whenever patients are present in the facility.

D. All newly-hired staff members shall be oriented to acquaint them with the facility organization and physical plant, specific duties and responsibilities of staff members, and patients' needs.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **508. Health Status (I).**

A. All staff members who have contact with patients shall have, within 12 months prior to initial patient contact, a health assessment as defined in Section 101.R.

B. The health assessment shall include a tuberculin skin test as described in Sections 1505 and 1506.

C. If a staff member is working at multiple facilities operated by the same licensee, copies of records for tuberculin skin testing and the pre-employment health assessment shall be acceptable at each facility. (II)

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **SECTION 600**

### **REPORTING**

## **601. Accidents/Incidents (II).**

A. The licensee shall report a record of each accident and/or incident occurring at the facility to the Department within five (5) days of occurrence. Reports submitted to the Department shall contain only: facility name, license number, type of accident/incident, date of accident/incident occurred, number of patients directly injured or affected, patient medical record identification number, patient age and sex, number of staff directly injured or affected, number of visitors directly injured or affected, witness(es) name(s), identified cause of accident/incident, internal investigation results if cause unknown, a brief description of the accident/incident including location where occurred, and treatment of injuries. The report retained by the facility, in addition to the minimum reported to the Department, shall contain: names of patient(s), staff, and/or visitor(s), the injuries and treatment associated with each patient, staff, and/or visitor. Records of all accidents and incidents shall be retained by the facility for ten (10) years after the patient stops receiving services at the facility.

B. The licensee shall report each accident and/or incident resulting in unexpected death or serious injury to the next of kin or party responsible for each affected individual at the earliest practicable hour, not exceeding twenty-four (24) hours. The licensee shall notify the Department immediately, not to exceed twenty-four (24) hours, via telephone, email or facsimile. The licensee shall submit a report of the licensee's investigation of the accident and/or incident to the Department within five (5) days. Accidents and/or incidents requiring reporting include, but are not limited to,:

1. Abuse, Neglect or Exploitation (Confirmed);
2. Abuse, Neglect or Exploitation (Suspected);
3. Criminal event against patient;
4. Death;
5. Fall resulting in fracture of bone or joint;
6. Hospitalization as a result of accident/incident;

7. Medication Error;
8. Procedures on wrong person;
9. Procedures on wrong site;
10. Severe burn;
11. Severe hematoma;
12. Severe laceration;
13. Attempted suicide; or
14. Anesthesia apparatus malfunction.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015; State Register Volume 39, Issue No. 7, Doc. No. 4471, eff July 24, 2015 (errata).

## **602. Fire/Disasters (II).**

A. The Department shall be notified immediately via telephone, email or facsimile regarding any fire in the facility, and followed by a complete written report, to include fire department reports, if any, to be submitted within a time-period determined by the facility, but not to exceed seventy-two (72) hours from the occurrence of the fire.

B. Any natural disaster that requires displacement of the patients or jeopardizes or potentially jeopardizes the safety of the patients, shall be reported to the Department via telephone, email or facsimile immediately, with a complete written report submitted within a time-period as determined by the facility, but not to exceed seventy-two (72) hours.

C. Where a required fire protection system is out of service, the facility shall notify the fire department and the fire code official immediately, and where required by the fire code official, the building shall either be evacuated or the facility shall provide an approved fire watch for all occupants left unprotected by the shut down until the fire protection system has been returned to service, as applicable to Division of Health Facilities Construction (DHFC) Guidelines Manual.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **603. Communicable Diseases (I).**

All cases of diseases that are required to be reported to the appropriate county health department shall be accomplished in accordance with R.61-20.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **604. Administrator Change.**

The Department shall be notified in writing by the licensee within 10 days of any change in administrator. The notice shall include at a minimum the name of the newly-appointed individual, documented qualifications as required by Section 502, and the effective date of the appointment.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **605. Joint Annual Report.**

Facilities shall complete and return a "Joint Annual Report" to the Department's Planning and Certificate of Need Division within the time-period specified by that division.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **606. Accounting of Controlled Substances (I).**

Any facility registered with the Department's Bureau of Drug Control and the federal Drug Enforcement Agency shall report any theft or loss of controlled substances to local law enforcement and to the Bureau of Drug Control within three working days of the discovery of the loss/theft. Any facility permitted by the S.C. Board of Pharmacy shall report the loss or theft of drugs or devices within three working days of the discovery of the loss/theft.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **607. Facility Closure.**

A. Prior to the permanent closure of a facility, the Department shall be notified in writing of the intent to close and the effective closure date. Within 10 days of the closure, the facility shall notify the Department of the provisions for the maintenance of the records. On the date of closure, the current original license shall be returned to the Department.

B. In instances where a facility temporarily closes, the Department shall be given written notice within a reasonable time in advance of closure. At a minimum this notification shall include, but not be limited to: the reason for the temporary closure, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the facility prior to its reopening. If the facility is closed for a period longer than one year, and there is a desire to re-open, the facility shall re-apply to the Department and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

### **608. Zero Census.**

In instances when there have been no patients in a facility for any reason, for a period of 90 days or more, the facility shall notify the Department in writing no later than the 100<sup>th</sup> day following the date of the last procedure/surgery performed. At the time of that notification, the Department shall consider, upon appropriate review of the situation, the necessity of inspecting the facility prior to any new and/or re-admissions to the facility. The facility shall still apply and pay the licensing fee to keep the license active despite being at zero census or temporarily closed. If the facility has no patients for a period longer than one year, and there is a desire to re-open, the facility shall re-apply to the Department and shall be subject to all licensing requirements at the time of that application, including construction-related requirements for a new facility.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **SECTION 700**

### **PATIENT RECORDS**

### **701. Content (II).**

A. The facility shall initiate and maintain an organized record for each patient. The record shall contain: sufficient documented information to identify the patient; the person responsible for each patient; the description of the diagnosis and the care, treatment, procedures, surgery, and/or services provided, to include the course of action taken and results; and the response and reaction to the care, treatment, procedures, surgery, and/or services provided. All entries shall be indelibly written, authenticated by the author, and dated.

B. Specific entries/documentation shall include at a minimum:

1. Consultations by physicians or other legally authorized healthcare providers;
2. Physical examination report, including pertinent medical history;
3. Orders and recommendations for all care, treatment, procedures, surgery, and/or services from physicians or other legally authorized healthcare providers, completed prior to, or at the time of patient arrival at the facility, and subsequently, as warranted;
4. Care, treatment, procedures, surgery, and/or services provided;
5. Record of administration of each dose of medication;
6. Medications administered and procedures followed if an error is made;
7. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms of tuberculosis;
8. Notes of observation during recovery, to include vital signs pre- and post-operative;
9. Discharge summary, including condition at discharge or transfer, instructions for self-care and instructions for obtaining postoperative emergency care;

10. Special information, *e.g.*, allergies, *etc.* Documentation regarding organ donation shall be included in the record at the patient's request;

11. Signed informed consent;

12. If applicable, anesthesia records of pertinent preoperative and postoperative reports including pre-anesthesia evaluation, type of anesthesia, technique and dosage used, and post-anesthesia follow-up note;

13. Operative report (dictated or written into the record after surgery/procedure) to include at least:

- a. Description of findings;
- b. Techniques utilized to perform procedure/surgery;
- c. Specimens removed, if applicable;
- d. Primary surgeon and assistants.

14. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated.

C. Except as required by law, patient records may contain written and interpretative findings and reports of diagnostic studies, tests, and procedures, *e.g.*, interpretations of imaging technology and video tapes without the medium itself.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **702. Authentication.**

A. Each document generated by a user shall be separately authenticated.

B. Written signatures or initials and electronic signatures or computer-generated signature codes are acceptable as authentication.

C. In order for a facility to employ electronic signatures or computer-generated signature codes for authentication purposes, staff shall be identified who are authorized to authenticate patient records utilizing electronic or computer-generated signatures.

1. At a minimum, the facility shall provide authentication safeguards to ensure confidentiality, including, but not limited to, the following:

- a. Each user shall be assigned a unique identifier that is generated through a confidential code;
- b. The facility shall certify in writing that each identifier is kept strictly confidential. This certification shall include a user's commitment to terminate his or her use of an assigned identifier if it is found that the identifier has been misused, meaning that the user has allowed another person(s) to use his or her personally-assigned identifier, or that the identifier has otherwise been inappropriately utilized;
- c. The user shall certify in writing that he or she is the only person with access to the identifier and the only person authorized to use the signature code.

2. The authentication system shall include a verification process to insure that the content of authenticated entries is accurate. The verification process shall include, at a minimum, the following provisions:

- a. Blanks, gaps, obvious contradictory statements, or other documentation that require the attention of the authorized user shall be considered authenticated until reviewed and corrected by the user and a revised report issued;
- b. Opportunity shall be provided for the user to verify that the document is accurate and that the signature has been properly recorded.

3. A user may terminate authorization for use of electronic or computer-generated signature upon written notice to the individual responsible for the maintenance of patient records.

D. The use of rubber stamp signature is acceptable under the following conditions:

1. The individual whose signature the rubber stamp represents shall be the only individual who has possession of and utilizes the stamp;

2. The individual places in the administrative offices of the facility a signed statement indicating that he or she is the only individual who has possession of and shall utilize the stamp;

3. Rubber stamp signatures are not permitted on orders for medications listed as “controlled substances” pursuant to R.61–4.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **703. Record Maintenance.**

A. The licensee shall provide accommodations, space, supplies, and equipment adequate for the protection, security, and storage of patient records.

B. When a patient is transferred to an emergency facility, a transfer summary to include, at a minimum, the diagnosis and medication administration record, shall accompany the patient to the receiving facility at the time of transfer or forwarded immediately after the transfer. Documentation of the information forwarded shall be maintained in the facility’s patient record. (I)

C. The patient record is confidential. Records containing protected or confidential health information shall be made available only to individuals granted access to that information, in accordance with state and federal laws. The facility shall have a written policy designating the persons allowed to access confidential patient information. (II)

D. Records generated by organizations or individuals contracted by the facility for care, treatment, procedures, surgery, and/or services shall be maintained by the facility that has admitted the patient. Appropriate information shall be provided to assure continuity of care.

E. The facility shall determine the medium in which information is stored. The information shall be readily retrievable and accessible by facility staff, as needed, and for regulatory compliance inspections.

F. Upon discharge of a patient, the record shall be completed within 60 days and filed in an inactive/closed file maintained by the licensee. Prior to the closing of a facility for any reason, the licensee shall arrange for preservation of records to ensure compliance with these regulations and other applicable law. The licensee shall notify the Department, in writing, describing these arrangements and the location of the records.

G. Records of patients shall be maintained for at least six years following the discharge of the patient. Other documents required by the regulation, *e.g.*, fire drills, shall be retained at least 12 months or until the next Department inspection, whichever is longer.

H. Patient records are the property of the facility; the original record shall not be removed without court order. (II)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **SECTION 800**

### **CARE/TREATMENT/PROCEDURES/SURGERY/SERVICES**

#### **801. General (I).**

A. Care, treatment, procedures, surgery, and/or services shall be provided, given, or performed effectively and safely in accordance with orders from physicians or other legally authorized healthcare providers, and precautions shall be taken for patients with special conditions, *e.g.*, pacemakers, pregnancy, Alzheimer’s disease, *etc.*, and/or for those who may be susceptible to deleterious effects as a result of the treatment.

B. The facility shall comply with all current federal, state, and local laws and regulations related to patient care, treatment, procedures, surgery, and/or services, and protection.

C. When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, food service, maintenance, housekeeping, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and a statement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to patient care, treatment, procedures, surgery, and/or services, confidentiality, and rights. (II)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **802. Physical Examination (I).**

A. A preoperative history and physical examination, pertaining to the procedure to be performed, shall be completed by a physician or legally authorized healthcare provider no earlier than 14 days prior to surgery/procedure, or 30 days prior to surgery/procedure with the condition that, on the day of surgery/procedure, the physician or legally authorized healthcare provider documents no notable changes in the original history and physical examination. If notable changes are discovered at that time, a history and physical examination shall be completed. A discharge summary from a health care facility that includes a history and physical examination may be acceptable as the preoperative history and physical examination, provided the summary is within the time requirements of this section, and is reviewed by the physician or legally authorized healthcare provider performing the surgery/procedure.

B. If a patient or potential patient has a communicable disease, a physician or other legally authorized healthcare provider shall insure that the facility has the capability to provide adequate care and prevent the spread of the disease, and that the staff members are adequately trained and qualified to manage the patient, or transfer the patient to an appropriate facility, if necessary.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **803. Surgical Services.**

If surgical services are provided, a current listing of all types of surgical services offered by the facility shall be available.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **804. Anesthesia Services (I).**

A. Anesthesia shall be administered only by:

1. An anesthesiologist;
2. A physician, other than an anesthesiologist, or dentist, or podiatrist who is qualified to administer anesthesia pursuant to the S.C. Code of Laws;
3. A certified registered nurse anesthetist; or
4. An anesthesiologist's assistant.

B. After the administration of a general anesthetic, a patient shall be attended by a physician until the patient may be safely placed under post-operative/procedure supervision by the nursing staff who shall then attend the patient until he or she has regained full consciousness, or until the effects of the anesthetic have sufficiently subsided for the patient to be able to summon aid when needed.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **805. Laboratory Services (II).**

A. Each facility shall provide or make arrangements for obtaining laboratory services required in connection with the surgery/procedure to be performed.

B. Should the facility conduct tests that involve human specimens by utilizing any laboratory equipment such as finger-stick glucose, hemoglobin, monitoring devices, *etc.*, for the purpose of providing information for the diagnosis, prevention, or treatment of disease or impairment, or assessment of health, the facility shall obtain a Certificate of Waiver from the Clinical Laboratories Improvement Amendments (CLIA) Program through the Department's CLIA Program.

C. Laboratory supplies shall not be expired.

D. A pathologist shall examine all surgical specimens except for those types of specimens that the medical staff has determined and documented do not require examination.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **806. Radiology Services (II).**

A. Each facility shall have the capability of providing or obtaining diagnostic radiology services in connection with the surgery/procedure to be performed.

B. Those facilities where radiological equipment and materials are used shall be in compliance with R.61-63 and R.61-64.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **807. Adverse Conditions (I).**

Patients in whom any adverse condition exists or in whom a complication is known or suspected to have occurred during or after the performance of the operative procedure shall remain in the facility until the condition/complication is eliminated, as determined by the physician, and the patient is stabilized. Patients requiring care for periods in excess of those set forth in Section 101.RR shall be transferred to a hospital.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **808. Patient Instruction (I).**

Written instructions shall be issued to all patients upon discharge and shall include, at a minimum, the following:

- A. Signs and symptoms of possible complications;
- B. Telephone number of the facility or the attending physician or other knowledgeable professional staff member from the facility should any complication occur or question arise;
- C. An emergency telephone number should any complication occur. It shall be the responsibility of the attending physician to arrange for needed care;
- D. Limitations regarding activities, foods, *etc.*;
- E. Date for follow-up or return visit, if applicable.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **SECTION 900**

### **RIGHTS AND ASSURANCES**

#### **901. General (II).**

A. The facility shall comply with all current federal, state, and local laws and regulations concerning patient care, treatment, procedures, surgery, and/or services, patient rights and protections, and privacy and disclosure requirements, *e.g.*, § 44-81-10, *et seq.*, S.C. Code Ann. (2002).

B. The facility shall comply with all relevant federal, state, and local laws and regulations concerning discrimination, *e.g.*, Title VII, Section 601 of the Civil Rights Act of 1964, and insure that there is no discrimination with regard to source of payment in the recruitment, location of patient, acceptance or provision of services to patients or potential patients, provided that payment offered is not less than the cost of providing services.

C. The facility shall develop and post in a conspicuous place in a public area of the facility a grievance/complaint procedure to be exercised on behalf of the patients that includes the address and phone number of the Department and a provision prohibiting retaliation should the grievance right be exercised.

D. Care, treatment, procedures, surgery, and/or services provided by the facility, and the charges for such, shall be delineated in writing. Patients shall be made aware of such charges and services, as verified by the signature of the patient or responsible party.

E. Patients shall be permitted to use the telephone and allowed privacy when making calls.

F. Adequate safeguards shall be provided for protection and storage of patients' personal belongings.

G. Patient rights shall be guaranteed, prominently displayed, and the facility shall inform the patient of these rights, to include, at a minimum:

1. The care, treatment, procedures, surgery, and/or services to be provided;
2. Informed consent for care, treatment, procedures, surgery, and/or services;
3. Respect for the patient's property;

4. Freedom from mental and physical abuse and exploitation;
  5. Privacy while being treated and while receiving care;
  6. Respect and dignity in receiving care, treatment, procedures, surgery, and/or services;
  7. Refusal of treatment. The patient shall be informed of the consequences of refusal of treatment, and the reason shall be reported to the physician and documented in the patient record;
  8. Refusal of experimental treatment and drugs. The patient's written consent for participation in research shall be obtained and retained in his or her patient record;
  9. Confidentiality and privacy of records. Written consent by the patient shall be obtained prior to release of information except to persons authorized by law. If the patient is mentally incompetent, written consent is required from the patient's responsible party. The facility shall establish policies to govern access and duplication of the patient's record.
- H. Except in emergencies, documentation regarding informed consent shall be properly executed prior to surgery/procedure.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 1000

### MEDICATION MANAGEMENT

#### **1001. General (I).**

- A. Medications, including controlled substances, medical supplies, intravenous solutions, and those items necessary for the rendering of first aid shall be properly managed in accordance with local, state, and federal laws and regulations, to include the securing, storing, and administering of medications, medical supplies, first aid supplies, biologicals and their disposal when discontinued or expired, or at discharge, death, or transfer of a patient.
- B. Non-legend medications that can be obtained without a prescription may be retained and labeled as stock in the facility for administration as ordered by a physician or other legally authorized healthcare provider.
- C. If controlled substances are to be used, a controlled substances registration from the Department's Bureau of Drug Control and a controlled substance registration from the federal Drug Enforcement Administration (DEA) shall be obtained. The registration(s) shall be displayed in a conspicuous location within the facility.
- D. Each facility shall maintain, upon the advice and written approval of the Medical Director or consultant pharmacist, an emergency kit/cart of lifesaving medicines and equipment for the use of physicians or other legally authorized healthcare providers in treating the emergency needs of patients.
  1. The kit/cart shall be sealed and stored in such a manner as to prevent unauthorized access and to ensure a proper environment for preservation of the medications within, but in such a manner as to allow immediate access.
  2. The exterior of each emergency medication kit/cart shall have displayed the following information:
    - a. "For Emergency Use Only";
    - b. Name, address, and telephone number of the consultant pharmacist.
  3. Whenever the kit/cart is opened, it shall be restocked and resealed within a reasonable time to prevent risk of harm to a patient.
  4. Medications used from the kit/cart shall be replaced pursuant to orders from a physician or other legally authorized healthcare provider according to facility policy.
  5. Contents of each section of the kit/cart shall be listed and maintained on or in the kit/cart, and shall correspond to the list. Documentation of monthly checks of expiration dates of medications and supplies is to be retained by the facility for a period of two years or until the Department's next inspection, whichever is longer.
- E. Medications shall not be expired.

F. Applicable reference materials published within the previous year shall be available at the facility in order to provide staff members with adequate information concerning medications.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1002. Medication Orders (I).**

A. Medications, to include oxygen, shall be administered in the facility to patients only upon orders of a physician or other legally authorized healthcare provider.

B. All orders (including verbal) shall be received only by licensed nurses or authorized healthcare providers, and shall be authenticated and dated by a physician or other legally authorized healthcare provider pursuant to the facility's policies and procedures, but no later than 72 hours after the order is given. Verbal orders received shall include the time of receipt of the order, description of the order, and identification of the physician or other legally authorized healthcare provider and the individual receiving the order.

C. Medications and medical supplies ordered for a specific patient shall not be provided to or administered to any other patient.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1003. Administering Medication (I).**

A. Each medication dose administered shall be properly recorded in the patient's record as the medication is administered. The medication administration record shall include the name of the medication, dosage, mode of administration, date, time, and the signature of the individual administering the medication. Initials may be utilized when recording administration, provided identification of the individual's initials is located within the record.

B. Expired medications shall not be administered to patients.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1004. Pharmacy Services (I).**

Facilities that maintain stocks of legend medications and biologicals for patient use within the facility shall obtain and maintain from the S.C. Board of Pharmacy a valid, current, nondispensing drug outlet permit, displayed in a conspicuous location in the facility, and have a consultant pharmacist on-call during facility operating hours.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1005. Medication Containers (I).**

Medications for each patient shall be dispensed from their original container(s), to include unit dose systems. There shall be no transferring between containers or opening blister packs to remove medications for destruction or adding new medications for administration, except by direction of a pharmacist.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1006. Medication Storage (I).**

A. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety and security. Medications shall be stored in accordance with manufacturer's directions and in accordance with all applicable state and federal laws and regulations.

B. Medications shall be properly stored and safeguarded to prevent access by unauthorized persons. Expired or discontinued medications shall not be stored with current medications. Storage areas shall be of sufficient size for clean and orderly storage, and shall be locked when not under direct observation by a licensed healthcare provider. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf-life.

C. Medications requiring refrigeration shall be stored in a refrigerator at the temperature established by the U. S. Pharmacopeia (36 - 46 degrees F.). Food and drinks shall not be stored in the same refrigerator in which medications and biologicals are stored. Blood and blood products may be stored

in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals.

D. Medications shall be stored:

1. Separately from poisonous substances, blood, or body fluids;
2. In a manner that provides for separation between oral and topical medications;
3. Separately from food.

E. Records shall be maintained of all stock controlled substances that indicate an accounting of all items received and/or administered in such a manner that the disposition of each dose of any particular item may be readily traced. Records shall be maintained for a minimum of two years or until the next inspection by the Department, whichever is longer.

F. Review of medication storage areas shall be conducted by the consultant pharmacist or his or her designee on at least a monthly basis. Records of such reviews shall be retained by the facility for at least two years or until the Department's next inspection, whichever is longer.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1007. Disposition of Medications (I).**

A. Medications shall not be retained in stock after the expiration date on the label and no contaminated or deteriorated medications shall be maintained. Expired, damaged, or deteriorated medications and biologicals shall be disposed of in the following manner:

1. When noncontrolled legend medications are destroyed, the following shall be documented: date of destruction, medication name, strength, quantity, mode of destruction, and the names of the individual performing the destruction and a witness. (This shall not be applicable to partial unused doses of medications.) The medications may also be disposed of by returning them to the dispensing pharmacy and obtaining a receipt from the pharmacy.
2. The destruction of controlled substances shall be accomplished pursuant to the requirements of R.61-4.

B. Destruction records shall be retained by the facility for at least two years or until the Department's next inspection, whichever is longer.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **SECTION 1100**

### **MEAL SERVICE**

#### **1101. General (II).**

A. All facilities that prepare food on-site shall be approved by the Department, and shall be regulated, inspected, and graded pursuant to R.61-25.

B. When meals or snacks are catered to a facility, such meals shall be obtained from a food service establishment graded by the Department, pursuant to R.61-25, and there shall be a written executed contract with the food service establishment.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1102. Food Storage (II).**

A. All food items shall be stored at a minimum of six inches above the floor on clean surfaces and in such a manner as to be protected from splash and other contamination.

B. Food stored in the refrigerator or freezer shall be covered, labeled, and dated. Prepared food shall not be stored in the refrigerator for more than 72 hours.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1103. Food Equipment and Utensils (II).**

The equipment and utensils utilized, and the cleaning, sanitizing, and storage of such shall be in accordance with R.61-25.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1104. Ice and Drinking Water (II).**

A. Ice from a water system that is in accordance with R.61–58, shall be available and precautions taken to prevent contamination. The ice scoop shall be stored in a sanitary manner outside of the ice container.

B. Potable drinking water shall be available and accessible to patients at all times.

C. The use of common drinking cups shall be prohibited.

D. Ice delivered to patient areas in bulk shall be in nonporous, covered containers that shall be cleaned after each use.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1105. Equipment (II).**

A. Liquid or powder soap in dispensers and sanitary paper towels shall be available at each food service handwash lavatory.

B. The facility shall include a separate handwash sink, convenient to serving, food preparation, and dishwashing areas.

C. All walk-in refrigerators and freezers shall be equipped with opening devices that will permit opening of the door from the inside at all times. (I)

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1106. Refuse Storage and Disposal (II).**

Refuse storage and disposal shall be in accordance with R.61–25.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**SECTION 1200****EMERGENCY PROCEDURES/DISASTER PREPAREDNESS****1201. Emergency Services (I).**

A. Appropriate equipment and services shall be provided to render emergency resuscitative and life-support procedures pending transfer to a hospital.

B. The facility shall have the capability of obtaining blood and blood products to meet emergency situations.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1202. Disaster Preparedness (II).**

A facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1203. Emergency Call Numbers (I).**

Although the facility may have access to “911,” emergency call data shall be immediately available and shall include, at a minimum, the telephone numbers of fire and police departments, ambulance service, and the Poison Control Center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of staff members to be notified in case of emergency.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**1204. Continuity of Essential Services (II).**

There shall be a written plan to be implemented to assure the continuation of essential patient support services for reasons such as power outage, water shortage, or in the event of the absence of any portion of the staff resulting from inclement weather or other causes.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 1300

### FIRE PREVENTION

#### **1301. Arrangements for Fire Department Response/Protection (I).**

A. Each facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, *i.e.*, fire plan and evacuation plan.

B. Facilities located outside a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be kept on file in the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1302. Tests and Inspections (I).**

A. Fire protection and suppression systems shall be maintained and tested in accordance with NFPA 10, 13, 14, 15, 25, 70, 72, and 96.

B. Fire alarm systems shall be maintained in a safe, operable condition in accordance with NFPA 70 and 99 and shall be inspected at least annually.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1303. Fire Response Training (I).**

A. Each staff member shall receive training within 24 hours of his or her first day of employment in the facility and at least annually thereafter, addressing at a minimum, the following:

1. Fire plan;
2. Reporting a fire;
3. Use of the fire alarm system, if applicable;
4. Location and use of fire-fighting equipment;
5. Methods of fire containment; and
6. Specific responsibilities, tasks, or duties of each staff member.

B. A plan for the evacuation of patients, staff members, and visitors, to include evacuation routes and procedures in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the facility.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1304. Fire Drills (I).**

A. An unannounced fire drill shall be conducted at least quarterly for all shifts. Each staff member shall participate in a fire drill at least once each year. Records of drills shall be maintained at the facility, indicating the date, time, shift, description and evaluation of the drill, and the names of staff members directly involved in responding to the drill. If fire drill requirements are mandated by statute or regulation, the provisions of the statute or regulation shall be complied with and shall supersede the requirements of this section.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1303 above.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 1400

### MAINTENANCE

#### **1401. General (II).**

A. The structure, including its component parts and equipment, shall be properly maintained to perform the functions for which it is designed.

B. The facility shall keep its component parts and all equipment in good repair and operating condition and documented.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

#### **1402. Equipment (II).**

A. Equipment used in the provision of care, treatment, procedures, surgery, and/or services shall meet appropriate specifications and calibrations and shall be monitored and operated in accordance with the manufacturer's guidelines and with local, State, and Federal laws.

B. If utilized, all equipment for the administration of anesthesia shall be readily available, clean or sterile, and operating properly.

1. Anesthesia apparatus shall be equipped with a device to measure the oxygen component of the gas being inhaled by the patient. The device shall emit audible and visual alarms should the proportion of oxygen fall below a safe level. (I)

2. Inspections shall be made prior to each use of the anesthesia equipment, as well as a record of all service and repair performed on all anesthesia machines, vaporizers, and ventilators, shall be maintained and retained for a minimum of two years or until the next Department's inspection, whichever is longer.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

#### **1403. Preventive Maintenance of Life Support Equipment (II).**

A. A written preventive maintenance program shall be developed and implemented for all life support equipment, to include, but not be limited to:

1. Patient monitoring equipment;
2. Isolated electrical systems;
3. Patient ground systems; and
4. Medical gas systems.

B. This equipment shall be calibrated, if applicable, and/or tested at periodic intervals, but not less than annually, to insure proper operation. After repairs and/or alterations are made to any equipment or system, thorough testing for proper operation shall be accomplished prior to returning it to service. (I)

C. Records shall be maintained on all life support equipment to indicate its history of testing and maintenance.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

### **SECTION 1500**

#### **INFECTION CONTROL AND ENVIRONMENT**

#### **1501. Staff Practices (I).**

Staff and volunteer practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices shall be in compliance with applicable guidelines of the Bloodborne Pathogens Standard of the Occupational Safety and Health Act (OSHA) of 1970; the Centers for Disease Control and Prevention (CDC) Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's *Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings*, and R.61-105; and other applicable federal, state, and local laws and regulations.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

#### **1502. Vaccinations (I).**

A. Hepatitis B.

1. All direct care staff who perform tasks involving contact with blood, blood-contaminated body fluids, other body fluids, or sharps shall have the hepatitis B vaccination series unless the vaccine is contraindicated or an individual is offered the series and declines. In either case the decision shall be documented.

2. Each staff member who elects vaccination shall have completed the initial dose of the three-dose series within 30 days of employment.

B. Influenza. All direct care staff shall have an annual influenza vaccination unless contraindicated or offered and declined. In either case the decision shall be documented.

C. MMR and Varicella. All direct care staff shall have been vaccinated or have evidence of immunity for measles, rubella, and varicella prior to patient contact unless contraindicated or offered and declined. In either case the decision shall be documented. Immunity to mumps is recommended.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1503. Live Animals.**

Live animals shall not be permitted in facilities.

**EXCEPTION:** This standard does not apply to patrol dogs accompanying security or police officers, guide dogs, or other service animals accompanying individuals with disabilities.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1504. Sterilization Procedures (I).**

A. Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and operating room materials as well as laboratory equipment and supplies. The sterilizing equipment shall have approved control and safety features. The accuracy of instrumentation and equipment shall be tested at least quarterly; periodic calibration and/or preventive maintenance shall be provided as necessary and a history of testing and service maintained.

B. The dates of sterilization and expiration shall be marked on all supplies sterilized in the facility.

**EXCEPTION:** Facilities may utilize “event-related” methodologies for determining sterile integrity in lieu of “time-related” methods provided there is an established policy and procedure.

C. The facility shall provide for appropriate storage and distribution of sterile supplies and equipment pursuant to facility policies and procedures.

D. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area, appropriate to the area and the equipment's purpose or use, shall be accomplished. A recognized method of monitoring disinfectant performance shall be employed. Disinfectants, *e.g.*, glutaraldehyde, Cidex, Sporox, hydrogen peroxide, shall be tested and maintained according to manufacturer's instructions and shall include, at a minimum, a record of readings/testings and change dates of the disinfectant solution.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1505. Tuberculosis Risk Assessment (I).**

A. All facilities shall conduct an annual tuberculosis risk assessment in accordance with CDC guidelines (See Section 102.B.6) to determine the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

B. The risk classification, *i.e.*, low risk, medium risk, shall be used as part of the risk assessment to determine the need for an ongoing TB screening program for staff and patients and the frequency of screening. A risk classification shall be determined for the entire facility. In certain settings, *e.g.*, healthcare organizations that encompass multiple sites or types of services, specific areas defined by geography, functional units, patient population, job type, or location within the setting may have separate risk classifications.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **1506. Staff Tuberculosis Screening (I).**

A. Tuberculosis Status. Prior to date of hire or initial patient contact, the tuberculosis status of direct care staff shall be determined in the following manner in accordance with the applicable risk classification:

B. Low Risk:

1. Baseline two-step Tuberculin Skin Test (TST) or a single Blood Assay for *Mycobacterium tuberculosis* (BAMT): All staff (within three (3) months prior to contact with patients) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline.

2. Periodic TST or BAMT is not required.

3. Post-exposure TST or a BAMT for staff upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified.

Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8–10) weeks after that exposure to *M. tuberculosis* ended.

C. Medium Risk:

1. Baseline two-step TST or a single BAMT: All staff (within three (3) months prior to contact with patients) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline.

2. Periodic testing (with TST or BAMT): Annually, of all staff who have risk of TB exposure and who have previous documented negative results. Instead of participating in periodic testing, staff with documented TB infection (positive TST or BAMT) shall receive a symptom screen annually. This screen shall be accomplished by educating the staff about symptoms of TB disease (including the staff and/or direct care volunteers responses), documenting the questioning of the staff about the presence of symptoms of TB disease, and instructing the staff to report any such symptoms immediately to the administrator or director of nursing. Treatment for latent TB infection (LTBI) shall be considered in accordance with CDC and Department guidelines and, if recommended, treatment completion shall be encouraged.

3. Post-exposure TST or a BAMT for staff upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8–10) weeks after that exposure to *M. tuberculosis* ended.

D. Baseline Positive or Newly Positive Test Result:

1. Staff with a baseline positive or newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or documentation of treatment for latent TB infection (LTBI) or TB disease or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). These staff members will be evaluated for the need for treatment of TB disease or latent TB infection (LTBI) and will be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

2. Staff who are known or suspected to have TB disease shall be excluded from work, required to undergo evaluation by a physician or legally authorized healthcare provider, and permitted to return to work only with approval by the Department TB Control program. Repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician or legally authorized healthcare provider.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **1507. Housekeeping (II).**

The facility and its grounds shall be uncluttered, clean, and free of vermin and offensive odors.

A. Interior housekeeping shall at a minimum include:

1. Cleaning each specific area of the facility (dry sweeping and dusting shall be prohibited in restricted areas as identified in facility policies and procedures);
2. Cleaning of operating/procedure rooms in accordance with established written procedures after each operation/procedure.

B. Exterior housekeeping shall at a minimum include:

1. Cleaning of all exterior areas, *e.g.*, porches and ramps, and removal of safety impediments such as snow and ice;
2. Keeping facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

**HISTORY: Formerly 61-91.1506. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

### **1508. Infectious Waste (I).**

Accumulated waste, including all contaminated sharps, dressings, and/or similar infectious waste, shall be disposed of in a manner compliant with OSHA Bloodborne Pathogens Standard, the Department's Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105.

**HISTORY: Formerly 61-91.1507. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

### **1509. Clean/Soiled Linen and Surgical Clothing (II).**

A. A supply of clean, sanitary linen/surgical clothing shall be available at all times. In order to prevent the contamination of clean linen/surgical clothing by dust or other airborne particles or organisms, it shall be stored and transported in a sanitary manner, *i.e.*, enclosed and covered. Linen/Surgical clothing storage rooms shall be used only for the storage of linen/surgical clothing. Clean linen/Surgical clothing shall not be stored with other items.

B. Soiled linen/Surgical clothing.

1. Provisions shall be made for collecting, transporting, and storing soiled linen and surgical clothing;
2. Soiled linen/Surgical clothing shall be kept in enclosed/covered containers.

**HISTORY: Formerly 61-91.1508. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **SECTION 1600**

### **QUALITY IMPROVEMENT PROGRAM**

### **1601. General (II).**

A. There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care, treatment, procedures, surgery, and/or services provided by the facility.

B. The quality improvement program, at a minimum, shall:

1. Establish desired outcomes and the criteria by which policy and procedure effectiveness is systematically, objectively, and regularly accomplished at a frequency as determined by the facility to ensure that policies and procedures and this regulation are met, but not less than every three months;
2. Identify, evaluate, and determine the causes of any deviation from the desired outcomes;
3. Identify the action taken to correct deviations and prevent future deviation, and the person(s) responsible for implementation of these actions;
4. Establish ways to measure the quality of patient care and staff performance as well as the degree to which the policies and procedures are followed;

5. Analyze the necessity of care, treatment, procedures, surgery, and/or services rendered;
6. Analyze the effectiveness of the fire plan;
7. Analyze all serious incidents and accidents, to include all patient deaths and significant medication errors;
8. Analyze any other unusual occurrences that threaten the health, safety, or well-being of the patients;
9. At least every three months, review an established percentage of patient records to verify the accuracy and integrity of the system, and take corrective action as needed;
10. Establish a systematic method of obtaining feedback from patients and other interested persons, *e.g.*, family members and peer organizations, as expressed by the level of satisfaction with care, treatment, procedures, surgery, and/or services received.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 1700

### DESIGN AND CONSTRUCTION

#### **1701. General (II).**

A facility shall be planned, designed, and equipped to provide and promote the health, safety, and well-being of each patient.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1702. Local and State Codes and Standards (II).**

Buildings shall comply with pertinent local and state laws, codes, ordinances, and standards with reference to design and construction. No facility shall be licensed unless the Department has assurance that responsible local officials (zoning and building) have approved the facility for code compliance.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1703. Applicable Code Editions (II).**

A. Facility design and construction shall comply with provisions of the codes officially adopted by the South Carolina Building Codes Council and the South Carolina State Fire Marshal applicable to ambulatory surgical facilities.

B. Unless specifically required otherwise by the Department, all facilities shall comply with the construction codes and construction regulations applicable at the time its license was issued.

C. Any facility that closes, has its license revoked, or surrenders its license, and applies for re-licensure at the same site, shall be considered a new building and shall meet the current codes, regulations, and requirements for the building and its essential equipment and systems in effect at the time of application for re-licensing.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

#### **1704. Submission of Plans and Specifications.**

A. Plans and specifications shall be submitted to the Department for review and approval for new construction, additions or alterations to existing buildings, replacement of major equipment, buildings being licensed for the first time, buildings changing license type, and for facilities increasing occupant load or licensed capacity. Final plans and specifications shall be prepared by an architect and/or engineer registered in South Carolina and shall bear their seals and signatures. Architectural plans shall also bear the seal of a South Carolina registered architectural corporation. Unless directed otherwise by the Department, submit plans at the schematic, design development, and final stages. All plans shall be drawn to scale with the title, stage of submission and date shown thereon. Any construction changes from the approved documents shall be approved by the Department. Construction work shall not commence until a plan approval has been received from the Department. During construction the owner shall employ a registered architect and/or engineer for observation and inspections. Upon approval of the Department, construction administration may be performed by an

entity other than the architect. The Department shall conduct periodic inspections throughout each project.

B. Plans and specifications shall be submitted to the Department for review and approval for projects that have an effect on:

1. The function of a space;
2. The accessibility to or of an area;
3. The structural integrity of the facility;
4. The active and/or passive fire safety systems (including kitchen equipment such as exhaust hoods or equipment required to be under an exhaust hood);
5. Doors;
6. Walls;
7. Ceiling system assemblies;
8. Exit corridors;
9. Life safety systems; or
10. That increases the occupant load or licensed capacity of the facility.

C. All subsequent addenda, change orders, field orders, and documents altering the Department review must be submitted. Any substantial deviation from the accepted documents shall require written notification, review and re-approval from the Department.

D. Cosmetic changes utilizing paint, wall covering, floor covering, etc., that are required to have a flame-spread rating or other safety criteria shall be documented with copies of the documentation and certifications kept on file at the facility and made available to the Department.

E. Any construction work which violates codes or standards will be required to be brought into compliance. All projects shall obtain all required permits from the locality having jurisdiction. Construction without proper permitting shall not be inspected by Department.

**HISTORY: Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **1705. Construction Inspections.**

All projects shall obtain all required permits from the locality having jurisdiction. Construction without proper permitting shall not be inspected by Department.

**HISTORY: Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## SECTION 1800

### FIRE PROTECTION EQUIPMENT AND SYSTEMS

#### **Editor's Note**

Former Section 1800, titled **General Construction Requirements**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **1801. Fire Alarms (I).**

A. A facility shall include a partial, manual, automatic, supervised fire alarm system. The system shall be arranged to transmit an alarm automatically to a third party by an approved method. The alarm system shall notify by audible and visual alarm all areas and floors of the building. The alarm system shall shut down central recirculating systems and outside air units that serve the area(s) of alarm origination as a minimum.

B. There must be a fire alarm pull station at each required exit and in or near each nurses station.

C. All fire, smoke, heat, sprinkler flow, or manual fire alarming devices or systems must be connected to the main fire alarm system and trigger the system when they are activated.

**HISTORY: Formerly 61-91.2102. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

### **1802. Gases (I).**

Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. “No Smoking” signs shall be posted conspicuously inside the facility and on oxygen cylinders. All cylinders shall be properly secured in place.

**HISTORY:** Formerly 61–91.2105. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1803. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1803, titled **Vertical Openings (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1804. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1804, titled **Wall and Partition Openings (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1805. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1805, titled **Ceiling Openings (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1806. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1806, titled **Firewalls (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1807. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1807, titled **Windows/Mirrors (II)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1808. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1808, titled **Floor and Wall Finishes (II)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1809. [Deleted].**

#### **Editor’s Note**

Former R. 61–91.1809, titled **Ceilings** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **SECTION 1900**

### **ELECTRICAL**

#### **Editor’s Note**

Former Section 1900, titled **Hazardous Elements of Construction**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1901. Signal System.**

A. All facilities shall have a signal system consisting of a call button for each bed, bath, toilet and treatment/examination room. A light shall be at or over each patient room door visible from the corridor. There shall be an audio-visual master station in a location continuously monitored by staff.

B. Activation of signal system shall be by pull cord or electronic device. Pull cord shall hang to a maximum of four (4) inches above finished floor.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1902. Emergency Generator Service (I).**

A. With concurrence of the local authority having jurisdiction, facilities shall have an emergency generator with a ten (10) second startup and six (6) hour run time based on the maximum load rating of the generator. As a minimum, emergency power shall be provided for but not limited to:

1. Emergency and Exit lighting;
2. Lighting for staff work areas;
3. All lighting and power at patient care areas;
4. Fire alarm telephone and signal systems;
5. At least one (1) elevator where required;
6. Fire pump and associated equipment;
7. Public toilet rooms;
8. All HVAC equipment serving patient areas; and
9. All patient life safety equipment;

**EXCEPTION:** In endoscopy facilities, an emergency power supply system is not required.

B. An Uninterruptible Power System (UPS) is not acceptable as an alternative to the generator system.

C. In the event of natural disaster or electrical power failure, no new surgery/procedures shall commence, and surgery/procedures in progress shall be concluded as soon as possible.

**HISTORY:** Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1903. [Deleted].**

#### **Editor's Note**

Former R. 61-91.1903, titled **Incinerators (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **1904. [Deleted].**

#### **Editor's Note**

Former R. 61-91.1904, titled **Furnishings/Equipment (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **SECTION 2000**

### **PHYSICAL PLANT**

#### **Editor's Note**

Former Section 2000, titled **Exits**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

### **2001. Surgical Suite(s).**

The size and design of the surgical suite(s) shall be in accordance with individual programs and this regulation. The following basic elements, designed to ensure no flow of through traffic, shall be incorporated in all facilities:

A. Operating/Procedure Room(s).

1. The number shall depend on the projected caseload and types of procedures to be performed. Rooms shall have adequate space to accommodate necessary equipment and staff.
2. Each operating room shall have a minimum clear area of 180 square feet exclusive of fixed and movable cabinets and shelves. The minimum width shall be 12 feet.

3. Each procedure room shall have a minimum clear area of 140 square feet exclusive of fixed and movable cabinets and shelves. The minimum width shall be 10 feet.

4. Additional clear area may be required as described in the narrative program to accommodate special functions in one or more of these rooms.

5. The facility shall include an emergency communication system connecting with the surgical suite work station.

**B. Surgery/Procedure and Recovery Equipment and Supplies**

1. Each operating/procedure room shall be completely equipped and supplied for the types of procedures to be performed. (I)

2. The center's medical staff and governing body shall develop policies and procedures to specify the types of emergency equipment required for use in the Ambulatory Surgical Facility's operating room(s). The equipment must meet the following requirements: (I)

- (a) Be immediately available for use during emergency situations;
- (b) Be appropriate for the facility's patient population; and
- (c) Be maintained by appropriate personnel.

**C. Surgical/Procedure Service Areas.** The facility shall include the following:

1. A work station located to permit visual surveillance of persons entering the surgical/procedure areas and the recovery area;

2. Sterilizing equipment with autoclave(s) conveniently located to serve all operating rooms;

**EXCEPTION:** Sterilizing equipment is not required in endoscopy facilities; however, a high-level disinfection of equipment is required in such facilities.

3. A medication distribution station provided for storage and preparation of medication to be administered to patients;

4. Scrub facilities provided near the entrance to each operating room. Scrub facilities with foot or knee controls shall be arranged to minimize any incidental splatter on nearby staff or supply carts. At a minimum, the facility shall include the following:

- a. Scrub sink with knee, elbow, or foot controls;
- b. Soap dispenser.

**EXCEPTION:** For endoscopy facilities, in lieu of scrub facilities, there shall be a handwash sink in each procedure room that is equipped with valves that can be operated without the use of hands.

5. A soiled workroom for the exclusive use of the surgical suite staff. The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, waste receptacle, and covered soiled receptacle, unless there is a separate soiled linen storage room;

**EXCEPTION:** In endoscopy facilities, a designated soiled work area will suffice in lieu of a soiled workroom.

6. A clean workroom when clean materials are assembled within the surgical suite prior to use. The workroom shall contain a work counter, a sink equipped for handwashing and space for clean and sterile supplies;

**EXCEPTION:** In endoscopy facilities, a designated clean work area will suffice in lieu of a clean workroom.

7. An area for cleaning, testing, and storing anesthesia equipment in accordance with accepted principles of aseptic technique.

**EXCEPTION:** An anesthesia area is not required in endoscopy facilities.

8. Staff change areas that shall contain adequate dressing space for changing of scrubs and shall contain lockers, showers, toilets, lavatories, and receptacles and facilities for the appropriate disposition of soiled scrubs; these areas shall be arranged to allow a restricted traffic pattern of authorized staff from outside the surgical suite to change into appropriate attire and enter the surgical suite;

**EXCEPTION:** Showers and areas for donning of scrub suits and boots are not required in endoscopy facilities.

9. Provisions for emergency eye-washing.
- D. Recovery Area. The facility shall include the following:
  1. An area for recovery of patients;
  2. Handwashing facilities, secured medication storage space, clerical work space, and sufficient storage space for supplies and equipment;
  3. At least four feet between beds or stretchers (two feet if next to a wall) and adequate space at the foot of the bed or stretcher as needed for work and staff circulation;
  4. Partitions, walls and/or cubicle curtains (on built-in tracks) to afford visual privacy for each patient;
  5. Recovery beds or reclining type of vinyl upholstered chairs or recovery stretchers;
  6. Equipment for oxygen, resuscitation, and suction.

**HISTORY:** Formerly 61–91.2502. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2002. Soiled Utility Room.**

Facilities shall have at least one soiled utility room per floor containing a clinical sink, work counter, waste receptacle and soiled linen receptacle.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2003. Clean Utility Room.**

Facilities shall have at least one clean utility room per floor containing a counter with handwashing sink and space for the storage and assembly of supplies for nursing procedures.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2004. Corridors (II).**

- A. Minimum public corridor width shall be five feet.
- B. There shall be at least one corridor that is no less than eight feet clear width between doors from the recovery area and/or operating/procedure rooms and an exit door. In a one-story building or on the ground floor of a multi-story building, if there is less than eight feet clear width, the corridors shall be so arranged as to allow a stretcher to exit from the recovery area or operating rooms directly into the corridor without turning and move to the required exit without having to make a turn. Minimum width shall be five feet.
- C. The location of items such as drinking fountains, telephone booths, vending machines, and portable equipment shall not restrict corridor traffic or reduce the required corridor width. (II)

**HISTORY:** Formerly 61–91.2505. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2005. Handrails/Guardrails (II).**

The facility shall have handrails on at least one side of each corridor/hallway, and on all stairways, ramps, and porches with two or more steps. Ends of all installed handrails shall return to the wall.

**HISTORY:** Formerly 61–91.2508. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2006. Restrooms (II).**

- A. There shall be an appropriate number of restrooms in the facility, to accommodate patients, staff, and visitors.
- B. The restrooms shall be accessible during all operating hours of the facility.
- C. A restroom(s) shall be equipped with at least one toilet fixture, toilet paper installed in a holder, a lavatory supplied with hot and cold running water, liquid or granulated soap, single-use disposable paper towels or electric air dryer, and a covered waste receptacle.
- D. The waiting/lobby area must have at least one restroom.

E. The facility shall have toilet fixtures in restrooms for patient use in ample number, located within or adjacent to the recovery area. The minimum requirement is one toilet fixture for every surgical and procedure room.

F. All toilet fixtures used by patients shall have approved grab bars securely fastened in a usable fashion.

G. Privacy shall be provided at toilet fixtures and urinals.

**HISTORY: Formerly 61-91.2509. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2007. Janitor's Closets.**

A. The facility shall include at least one (1) lockable janitor's closet throughout the facility.

B. Each shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies, *e.g.*, mops.

**HISTORY: Formerly 61-91.2511. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2008. Storage Areas.**

A. Adequate general storage areas shall be provided for patient and staff/volunteer belongings, equipment, and supplies as well as clean linen, soiled linen, wheelchairs, and general supplies and equipment.

B. Soiled linen shall be stored in an enclosed room. This room may also be the soiled workroom.

C. Storage buildings on the premises shall meet the requirements of the current building code regarding distance from the licensed building. Storage in buildings other than on the facility premises shall be secure and accessible. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

D. Supplies/Equipment shall not be stored directly on the floor. Supplies/Equipment susceptible to water damage/contamination shall not be stored under sinks or other areas with a propensity for water leakage.

E. Chemicals indicated as harmful on the product label, cleaning materials, and supplies shall be safely stored in cabinets or well-lighted closets/rooms.

**HISTORY: Formerly 61-91.2512. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2009. Elevators (II).**

Elevators shall be inspected and tested upon installation, prior to first use, and annually thereafter by a certified elevator inspector.

**HISTORY: Formerly 61-91.2513. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2010. Telephone Service.**

At least one land-line telephone shall be available on each floor of the facility for use by patients and/or visitors for their private, discretionary use; pay phones for this purpose are acceptable

**HISTORY: Formerly 61-91.2514. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2011. Location.**

A. Transportation. The facility shall be served by roads that are passable at all times and are adequate for the volume of expected traffic.

B. Parking. The facility shall have a parking area to reasonably satisfy the needs of patients, staff members, and visitors.

C. Access to firefighting equipment. Facilities shall maintain adequate access to and around the building(s) for firefighting equipment. (I)

**HISTORY:** Formerly 61–91.2515. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2012. Incinerators (I).**

If the facility has an incinerator, it shall conform to the requirements of the Department.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2013. Furnishings/Equipment (I).**

A. The facility shall maintain the physical plant free of fire hazards and impediments to fire prevention.

B. No portable electric or unvented fuel heaters shall be permitted in the facility except as permitted by the State Fire Marshal Regulations.

C. Wastebaskets, window dressings, portable partitions, cubicle curtains, mattresses, and pillows shall be noncombustible, inherently flame-resistant, or treated or maintained flame-resistant in accordance with the applicable code in Section 1700.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2014. Water Requirements.**

A. The facility shall establish written policies and procedures to prevent waterborne microbial contamination within the water distribution system.

B. The facility shall ensure the practice of hand hygiene to prevent the hand transfer of pathogens, and the use of barrier precautions (e.g. gloves) in accordance with established guidelines.

C. The facility shall eliminate contaminated water or fluid from environmental reservoirs (e.g. in equipment or solutions) wherever possible.

D. The facility shall not place decorative fountains and fish tanks in patient-care areas. If decorative fountains are used in separate public areas, the facility shall ensure they are disinfected in accordance with manufacturer's instructions and safely maintained.

E. The facility plumbing fixtures that require hot water and are accessible to patients shall be supplied with water which thermostatically controlled to a temperature of at least 100 degrees F. (37.8 degrees C) and not exceeding 125 degrees F. (51.7 degrees C.) at the fixture.

F. The facility shall have a written plan to respond to disruptions in water supply. The plan must include a contingency plan to estimate water demands for the entire facility in advance of significant water disruptions (i.e., those expected to result in extensive and heavy microbial or chemical contamination of the potable water), sewage intrusion, or flooding.

G. When a significant water disruption or an emergency occurs, the facility shall:

1. Adhere to any advisory to boil water issued by the municipal water utility;
2. Alert patients, families, employees, volunteers, students and visitors not to consume water from drinking fountains, ice, or drinks made from municipal tap water, while the advisory is in effect, unless the water has been disinfected;
3. After the advisory is lifted, run faucets and drinking fountains at full flow for greater than 5 minutes, or use high-temperature water flushing or chlorination;
4. All ice and drinks that may have been contaminated must be disposed and storage containers cleaned; and
5. Decontaminate the hot water system as necessary after a disruption in service or a cross-connection with sewer lines has occurred.

H. The facility shall follow appropriate recommendations to prevent cross connection and other sources of contamination of ice for human consumption and to prevent contamination of hydrotherapy equipment and medical equipment connected to water systems (e.g. automated endoscope reproducers).

I. The facility shall maintain and implement policies and procedures addressing the management of failure of waste water systems.

J. Patient and staff handwashing lavatories and showers, if any, shall include hot and cold water at all times.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2015. Panelboards (II).**

The directory shall be labeled to conform to the actual room designations. Clear access of stored materials shall be maintained to the panel. The panelboard directory shall be labeled to conform to the actual room numbers or designations.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2016. Lighting.**

A. Spaces occupied by persons, machinery, equipment within buildings, approaches to buildings, and parking lots shall be lighted. (II)

B. The facility shall have adequate artificial light to include sufficient illumination for reading, observation, and activities.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2017. Heating, Ventilation, and Air Conditioning (HVAC) (II).**

A. The HVAC system shall be inspected at least once a year by a certified/licensed technician.

B. No HVAC supply or return grill shall be installed within three feet of a smoke detector. (I)

C. Intake air ducts shall be filtered and maintained to prevent the entrance of dust, dirt, and other contaminating materials.

D. Each bath/restroom shall have either operable windows or have approved mechanical ventilation.

**HISTORY:** Added by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

# **SECTION 2100**

## **SEVERABILITY**

## **2101. General.**

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

**HISTORY:** Formerly 61-91.2601. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2102. [Renumbered].**

### **Editor's Note**

See, now S.C. Code Regs 61-91.1801.

## **2103. [Deleted].**

### **Editor's Note**

Former R. 61-91.2103, titled **Smoke Detectors (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2104. [Deleted].**

### **Editor's Note**

Former R. 61-91.2104, titled **Flammable Liquids (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2105. [Renumbered]**

### **Editor's Note**

Former R. 61–91.2105 was titled **Gases (I)**, see, now S.C. Code Regs. 61–91.1802.

## SECTION 2200

### GENERAL

### **Editor's Note**

Former Section 2200, titled **Water Supply/Hygiene**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4464, eff June 26, 2015.

## **2201. General.**

Conditions that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

**HISTORY: Formerly 61–91.2701. Amended by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.**

## **2202. [Deleted].**

### **Editor's Note**

Former R. 61–91.2202, titled **Disinfection of Water Lines (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2203. [Deleted].**

### **Editor's Note**

Former R. 61–91.2203, titled **Temperature (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2204. [Deleted].**

### **Editor's Note**

Former R. 61–91.2204, titled **Stop Valves** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2205. [Deleted].**

### **Editor's Note**

Former R. 61–91.2205, titled **Cross-connections (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## **2206. [Deleted].**

### **Editor's Note**

Former R. 61–91.2206, titled **Wastewater Systems (I)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 2300

### ELECTRICAL [Renumbered and Deleted]

### **Editor's Note**

See, now SECTION 1900.

## **2301. [Deleted]**

### **Editor's Note**

Former R. 61–91.2301 titled **General (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2302. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2015.

**2303. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2016.

**2304. [Deleted]**

**Editor's Note**

Former R. 61–91.2304 titled **Receptacles (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2305. [Deleted]**

**Editor's Note**

Former R. 61–91.2305 titled **Ground Fault Protection (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2306. [Deleted]**

**Editor's Note**

Former R. 61–91.2306 titled **Exit Signs (I)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2307. [Deleted]**

**Editor's Note**

Former R. 61–91.2307 titled **Emergency Call System**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2308. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.1902.

SECTION 2400

HEATING, VENTILATION, AND AIR CONDITIONING [Deleted]

**2401. [Deleted].**

**Editor's Note**

Former R. 61–91.2401, titled **General (II)** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**2402. [Deleted].**

**Editor's Note**

Former R. 61–91.2402, titled **Heating, Ventilation, Air Conditioning** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

**2403. [Deleted].**

**Editor's Note**

Former R. 61–91.2403, titled **Ventilation Requirements** was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4471, eff June 26, 2015.

## SECTION 2500

### PHYSICAL PLANT [Renumbered and Deleted]

#### **2501. [Deleted]**

**Editor's Note**

Former R. 61–91.2501 titled **Administrative Areas**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

#### **2502. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2001.

#### **2503. [Deleted]**

**Editor's Note**

Former R. 61–91.2503 titled **Clinical Facilities (If Provided)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

#### **2504. [Deleted]**

**Editor's Note**

Former R. 61–91.2504 titled **Doors (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

#### **2505. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2004.

#### **2506. [Deleted]**

**Editor's Note**

Former R. 61–91.2506 titled **Ramps (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

#### **2507. [Deleted]**

**Editor's Note**

Former R. 61–91.2507 titled **Landings (II)**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

#### **2508. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2005.

#### **2509. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2006.

#### **2510. [Deleted]**

**Editor's Note**

Former R. 61–91.2510 titled **Sinks and Handwashing Fixtures**, was deleted by State Register Volume 39, Issue No. 6, Doc. No. 4459, eff June 26, 2015.

**2511. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2007.

**2512. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2008.

**2513. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2009.

**2514. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2010.

**2515. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2011.

SECTION 2600

SEVERABILITY [Renumbered]

**2601. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2101.

SECTION 2700

GENERAL [Renumbered]

**2701. [Renumbered]**

**Editor's Note**

See, now S.C. Code Regs. 61–91.2201.

**61–92. UNDERGROUND STORAGE TANK CONTROL REGULATIONS.**

The following provisions of Regulation 61–92 became effective March 23, 1990, and replace former 61–92 in its entirety.

These regulations are promulgated under Title 44 chapter 2 of the 1976 South Carolina Code of Laws, as amended.

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## PART 280

### TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

#### *SUBPART A*

#### *Program Scope and Interim Prohibition*

### SECTION 280.10. APPLICABILITY.

(a) The requirements of this Part apply to all owners and operators of an UST system as defined in Section 280.12 except as otherwise provided in paragraphs (b), (c), (d), and (e) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.

(b) The following UST systems are excluded from the requirements of this Part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a de minimis concentration of regulated substances.

- (6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.
- (c) Deferrals. Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:
  - (1) Wastewater treatment tank systems;
  - (2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
  - (3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;
  - (4) Airport Hydrant fuel distribution systems; and
  - (5) UST systems with field-constructed tanks.
- (d) Deferrals. Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.
- (e) No person may place regulated substances and no owner or operator may cause regulated substances to be placed into an UST system for which the owner or operator does not hold a currently valid registration or permit.

**HISTORY:** Added by State Register Volume 21, Issue No. 5, eff May 23, 1997.

### **SECTION 280.11. INTERIM PROHIBITION FOR DEFERRED UST SYSTEMS.**

- (a) No person may install an UST system listed in Section 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):
  - (1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
  - (2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and
  - (3) Is constructed or lined with material that is compatible with the stored substance.
- (b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

[Note: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.]

### **SECTION 280.12. DEFINITIONS.**

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

“Cathodic protection” is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

“Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

“Coastal zone” means all coastal waters and submerged lands seaward to the State’s jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

“Community Water System (CWS)” means a public water system that serves at least 15 service connections used by year-round residents of the area served by the system; or regularly serves at least 25 year-round residents. The following are included as part of the community water system:

- (a) The wellhead for groundwater and/or intake point(s) for surface water;
- (b) Collection, treatment, storage, and distribution facilities that are part of the community water system; and
- (c) The piping distribution system that delivers the water to the community.

“Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

“Connected piping” means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purposes of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

“Consumptive use” with respect to heating oil means consumed on the premises.

“Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metals tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

“Critical area” means any of the following: (1) coastal waters, (2) tidelands, or (3) beach/dune systems, as defined by the Office of Ocean and Coastal Resource Management Regulations.

“Department” means the South Carolina Department of Health and Environmental Control.

“Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

“Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

“Excavation zone” means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

“Existing tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

- (a) the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b)(1) either a continuous on-site physical construction or installation program has begun; or,

(2) the owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

“Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland and nurseries with growing operations.

“Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production products.

“Free product” refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water.)

“Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

“Hazardous substance UST system” means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

“Heating oil” means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

“Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

“Interstitial space” means the opening formed between the inner and outer wall of a UST system with double-walled construction or the opening formed between the inner wall of a containment sump and the UST system component that it contains.

“Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), and for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

“Maintenance” means the normal operational upkeep to prevent an underground storage tank system from releasing product.

“Motor fuel” means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

“Navigable waters” means those waters which are now navigable, or have been navigable at any time, or are capable of being rendered navigable by the removal of accidental obstruction, by rafts of lumber or timber by small pleasure or sport fishing boats. Navigability is defined in R.19-450, Permits for Construction in Navigable Waters.

“New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also “Existing Tank System”).

“Noncommercial purposes” with respect to motor fuel means not for resale.

“On the premises where stored” with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

“Operational life” refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

“Operator” means any person in control of, or having responsibility for, the daily operation of the UST system.

“Overfill release” is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

“Owner” means:

(a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, a person who owns an UST system used for storage, use, or dispensing of regulated substances; or

(b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, a person who owned such UST immediately before the discontinuation of its use; or

(c) a person who has assumed legal ownership of the UST system through the provisions of a contract of sale or other legally binding transfer of ownership.

“Person” means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States Government.

“Petroleum UST system” means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

“Pipe” or “Piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

“Pipeline facilities (including gathering lines)” are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

“Potable Drinking Water Well” means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which:

(a) Supplies water for a non-community public water system; or

(b) Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses).

(c) Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

“Regulated substance” means:

(a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C); and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(c) The term “regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuels oils, lubricants, petroleum solvents, and used oils.

“Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

“Release detection” means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

“Repair” means to restore a tank or UST system component that has caused a release of product from the UST system.

“Replace” means to remove a UST system or UST system component and to install another UST system or UST system component in its place.

“Residential tank” is a tank located on property used primarily for dwelling purposes.

“SARA” means the Superfund Amendments and Reauthorization Act of 1986.

“Secondary containment” means an impervious layer of materials which is installed around a tank or system of tanks, so that any volume of regulated substances which may be released from a tank will be prevented from contacting the environment outside said impervious layer for the period of time necessary to detect and recover released regulated substances. Materials or devices used to provide a secondary containment may include concrete, impervious liners, double-wall tanks or other materials or devices, singularly or in combination, which is approved by the Department.

“Septic tank” is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

“Storm-water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

“Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

“Tank” is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Under-Dispenser Containment (UDC)” means a component underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations;
- (b) Be compatible with the substance conveyed by the piping; and
- (c) Allow for visual inspection and access to the components in the containment system and/or be monitored.

“Underground area” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

“Underground release” means any belowground release.

“Underground storage tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

- (a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (b) Tanks used for storing heating oil for consumptive use on the premises where stored;
- (c) Septic tank;
- (d) Pipeline facility (including gathering lines) regulated under:
  - (1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
  - (2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
  - (3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;
- (e) Surface impoundment, pit, pond, or lagoon;
- (f) Storm-water or wastewater collection system;
- (g) Flow-through process tank;
- (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- (i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” or “UST” does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

“Upgrade” means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

“UST system” or “Tank system” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

“Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue No. 5, eff May 23, 2008.

#### ***SUBPART B***

#### ***UST Systems: Design, Construction, Installation, Notification and Permitting***

### **SECTION 280.20. PERFORMANCE STANDARDS FOR NEW UST SYSTEMS.**

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST systems is used to store regulated substances, all owners and operators of new UST systems must obtain permits in accordance with Section 280.23 and meet the following requirements.

(a) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic or

[Note: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, “Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products”; Underwriter’s Laboratories of Canada CAN4-S615-M83, “Standard for Reinforced Plastic Underground Tanks for Petroleum Products”; or American Society of Testing and Materials Standard D4021-86, “Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks.”]

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or according to guidelines established by the Department; or

[Note: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute “Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks”;

(B) Underwriters Laboratories Standard 1746, “Corrosion Protection Systems for Underground Storage Tanks”;

(C) Underwriters Laboratories of Canada CAN4-S603-M85, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids,” and CAN4-G03.1-M85, “Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids,” and CAN4-S631-M84, “Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”; or

(D) National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” and Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”]

- (3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

[Note: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."]

- (4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (a)(4)(i) of this section for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a)(1) through (4) of this section.

(b) Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The piping is constructed of fiberglass-reinforced plastic; or

[Note: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."]

- (2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in Section 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with Section 280.31 or guidelines established by the Department; or

[Note: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."]

- (3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

[Note: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.]

(4) The piping construction and corrosion protection are determined by the Department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in paragraphs (b)(1) through (3) of this section.

(c) Spill and overfill prevention equipment.

(1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the Department to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1)(i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(d) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all new UST systems must comply with the product transfer equipment requirements as follows:

(1) All tank systems installed after December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within 6 inches of the bottom of the tank; or

(2) All tank systems installed before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) Tank systems used for the storage of used oils are not required to be equipped with a drop tube.

(e) Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

[Note: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (e) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."]

(f) Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (e) of this section by providing a certification of compliance to the Department on the Permit to Operate application form.

- (1) The installer has been certified by the tank and piping manufacturers; or
- (2) The installer has been certified or licensed by the Department; or
- (3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
- (4) The installation has been inspected and approved by the Department; or
- (5) All work listed in the manufacturer's installation checklists has been completed; or
- (6) The owner and operator have complied with another method for ensuring compliance with paragraph (e) of this section that is determined by the Department to be no less protective of human health and the environment.

(g) Effective with the enactment of this regulation, each new or replacement underground storage tank, or piping connected to any such new tank, that is within 1,000 feet of any existing community water system or any existing potable drinking water well must be secondarily contained and monitored for leaks. In the case of a replacement of a previously installed underground storage tank or previously installed piping connected to the underground storage tank, the secondary containment and monitoring shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system. In addition, each new or replacement motor fuel dispenser system installed within 1,000 feet of any existing community water system or any existing potable drinking water well must have under-dispenser containment. New piping associated with this installation must be secondarily contained. These requirements do not apply to repairs meant to restore an underground storage tank, pipe, or dispenser to operating condition except that when piping repairs over a consecutive 12 month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping. In the case of dispenser replacement on suction piping systems that meet the requirements of Section 280.41(b)(2)(i - v), this requirement does not apply if the replacement does not involve any connectors, risers, or piping below the union or check valve. Secondary containment systems shall be designed, constructed, installed and maintained to:

- (1) Contain regulated substances released from a UST system until they are detected and removed; and
- (2) Prevent a release of regulated substances to the environment at any time during the operational life of the UST system; and
- (3) Be monitored monthly for a release in accordance with Section 280.43 (g). The requirements of this section also apply to new or replacement underground storage tank systems that serve emergency generators.

(h) Secondary containment required. All new tank systems which are installed within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters, must install an approved method of secondary containment.

- (i) Release detection. Release detection, conducted in accordance with Subpart D, must begin when regulated substances are introduced into the tank system.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue No. 5, eff May 23, 2008.**

## **SECTION 280.21. UPGRADING OF EXISTING UST SYSTEMS.**

(a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

- (1) New UST system performance standards under Section 280.20;
- (2) The upgrading requirements in sections (b) through (d) of this section; or

(3) Closure requirements under Subpart G of this Part, including applicable requirements for corrective action under Subpart F.

(b) Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) Interior lining. A tank may be upgraded by internal lining if:

- (i) The lining is installed in accordance with the requirements of Section 280.33, and
- (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Section 280.20(a)(2)(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

- (i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
- (ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with Section 280.43(d) through (h); or
- (iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of Section 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or
- (iv) The tank is assessed for corrosion holes by a method that is determined by the Department to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2)(i) through (iii) of this section.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

- (i) The lining is installed in accordance with the requirements of Section 280.33; and
- (ii) The cathodic protection system meets the requirements of Section 280.20(a)(2)(ii), (iii), and (iv).

[Note: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."]

(c) Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of Section 280.20(b)(2)(ii), (iii), and (iv).

[Note: The codes and standards listed in the note following Section 280.20(b)(2) may be used to comply with this requirement.]

(d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in Section 280.20(c).

(e) Product transfer equipment. To decrease vapor emissions associated with product transfer to the UST system, all existing UST systems must comply with product transfer equipment requirements as follows:

(1) All UST systems upgraded after December 22, 1996, must comply with the new UST system product transfer equipment requirements specified in Section 280.20(d)(1); or

(2) All UST systems upgraded before or on December 22, 1996, must be equipped with a drop tube that enters the top of the tank at the fill port and extends to within one foot of the tank bottom by December 22, 2001; or

(3) UST systems used for the storage of used oils are not required to be equipped with a drop tube.

(f) At least 30 days before beginning upgrading of existing UST systems to satisfy the requirements of Section 280.21, or within another reasonable time period determined by the Department, owners and operators must notify the Department of their intent to upgrade the UST system.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.**

## **SECTION 280.22. NOTIFICATION REQUIREMENTS.**

(a) By January 1, 1986 any owner of a tank storing or having stored regulated substances on or before January 1, 1986 shall notify the Department of the existence of such a tank specifying the type, location, storage capacity, age, and uses of such a tank (i.e., operational status at the time of notification) and of any known past failure(s) and corrective action taken as a result of the failure. The notification shall be made using EPA Form 7530-1 or Department Form DHEC-1917.

(b) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within 12 months after the date of enactment of these regulations (R.61-92), notify the Department of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The notification shall be made using EPA Form 7530-1 or Department Form DHEC-3856. The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the Department under this subsection.

(c) Notice under Subparagraph (b) shall specify, to the extent known to the owner:

(1) The date the tank was taken out of operation;

(2) The age of the tank on the date taken out of operation;

(3) The capacity, type and location of the tank; and

(4) The type and quantity of substances left stored in such tank on the date taken out of operation.

(d) Any owner which brings into operation an underground storage tank after the initial notification period specified under paragraph (a), shall notify the Department within 30 days using the procedures specified in paragraph (a) of this section.

(e) Paragraphs (a) through (d) of this subsection shall not apply to tanks for which notice was given pursuant to Section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(f) Upon receipt of an approvable notification from existing tank owners, the Department will store the notification information for the purpose of managing, and appropriately cross-referencing and indexing the data.

(g) After January 1, 1986, any owner of an existing tank which has not notified with Department in accordance with this section shall be in violation of these regulations.

(h) A regulated tank for which the Department has received an approvable notification is considered to be registered.

(i) The Department may issue, deny, revoke, suspend or modify the registration under such conditions as it may prescribe herein for the operation of any tank.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue No. 5, eff May 23, 2008.**

## **SECTION 280.23. NEW TANKS—PERMITS REQUIRED**

(a) After January 1, 1986, all new tanks must be permitted. The person who proposes to install a new tank must apply for a construction permit, on a form supplied by the Department or an approved substitute, and possess said permit prior to tank installation and shall meet the new tank design, construction, and installation requirements of Section 280.20.

(b) The person who proposes to place a new tank in operation must apply for an operating permit, on a form supplied by the Department, and possess said permit prior to placing the tank in operation.

(1) The permit to operate application must certify compliance with the following requirements:

- (i) Installation of tanks and piping under Section 280.20(e);
- (ii) Cathodic protection of steel tanks and piping under Section 280.20(a) and (b);
- (iii) Financial responsibility under Subpart H of this Part;
- (iv) Release detection under Sections 280.41 and 280.42; and
- (v) Testing under Section 280.24

(2) All owners and operators of new UST systems must ensure that the installer certifies in the permit to operate application form that the methods used to install the tanks and piping complies with the requirements in Section 280.20(e).

(3) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's permitting obligations under this section.

(c) After January 1, 1986, any person who installs or operates a new tank without receiving permits will be in violation of these regulations.

(d) The Department may issue, deny, revoke, suspend or modify permits under such conditions as it may prescribe for the operation of any tank.

(e) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank where the Department has determined:

- (1) Required spill prevention equipment is not installed; or
- (2) Required overfill protection equipment is not installed; or
- (3) Required leak detection equipment is not installed; or
- (4) Required corrosion protection equipment is not installed; or
- (5) Other conditions the Department deems appropriate.

(f) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (e) of this section, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within seven (7) calendar days.

(g) The Department may classify as ineligible for delivery, deposit, or acceptance of product an underground storage tank if the owner/operator of that tank has been issued a written warning or citation (notice of violation) under any of the following circumstances and the owner/operator has failed to take corrective action within 30 days:

- (1) Failure to properly operate and/or maintain leak detection equipment; or
  - (2) Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment;
- or
- (3) Failure to maintain financial responsibility; or
  - (4) Failure to protect a buried metal flexible connector from corrosion.

(h) When the Department determines that an underground storage tank or tanks should be classified as ineligible for delivery, deposit or acceptance of product under paragraph (g) of this section, the Department shall notify the owner/operator of the Department's intent to declare the tank(s) ineligible for delivery, deposit, or acceptance of product if the deficiency is not corrected within seven (7) calendar days

(i) When the out of compliance condition has not been corrected after the seven (7) calendar days established under paragraph (f) or (h) of this section, the Department will declare the tank ineligible for delivery, deposit, or acceptance of product and notify the owner/operator and supplier of the delivery prohibition.

(1) The notification of owner/operator and supplier of a delivery prohibition will be by at least two means of communication (for example: telephone, e-mail, facsimile, or messenger); and

(2) The Department will post the delivery prohibition notice on the Department's Tank Registry website; and

(3) The Department will affix a delivery prohibition notice to the fill port of the affected tank.

(j) It shall be illegal for any person to deliver, deposit, or accept product into a tank where the Department has imposed delivery prohibition and has notified the owner/operator and supplier of the delivery prohibition.

(k) When the owner/operator notifies the Department that the deficiency has been corrected and the Department has verified that the tank(s) is in compliance:

(1) The delivery prohibition will be lifted and the delivery prohibition notice will be removed from the tank fill port within two (2) working days (Monday - Friday) of the notification; and

(2) The Department will notify the owner/operator and the supplier that delivery to the tank may resume; and

(3) The delivery prohibition website posting will be cleared.

(l) The Department retains the discretion to decide whether to identify an underground storage tank as ineligible for delivery, deposit, or acceptance of product based on whether the prohibition is in the best interest of the public. In some cases, prohibition of delivery, deposit, or acceptance of product to an underground storage tank is not in the best interest of the public, even in the case of significant and/or sustained noncompliance (e.g., certain emergency generator underground storage tanks). In other cases, the Department may choose to classify an underground storage tank as ineligible to receive product but then authorize delivery in emergency situations (for example natural disasters).

NOTE: Delivery Prohibition does not relieve the owner/operator from administrative enforcement actions due to the out of compliance condition(s).

(m) Any person who plans to install a system of two or more tanks at the same location, may apply for one permit for that system of tanks.

**HISTORY: Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.**

## **SECTION 280.24. TESTING.**

(a) During installation of tank systems, tanks and piping must be pneumatically and/or hydrostatically tested according to accepted industry standards and the manufacturers' installation instructions.

(b) The Department may require the operator to hydrostatically test for tightness, when accurate release detection system records have not been maintained as specified in Subpart D.

(c) The Department may require the operator to hydrostatically test for tightness, when stored regulated substances and/or their vapors have been detected in neighboring structures, sewers, wells, or other on-or-off property locations.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.**

## **SECTION 280.25. SECONDARY CONTAINMENT REQUIRED.**

(a) Secondary containment requirements of contained in Section 280.20(g); or of this regulation shall apply to those UST systems located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters that also meet one of the following conditions:

1. The UST system fails to meet the Section 280.21 upgrading provisions; or

2. The UST system fails to meet the Substantial Compliance criteria found in SC Code Sections 44-2-40(A) and 44-2-50(A) of the SUPERB Act and evaluated in the Department Form (# 1556) based on the last three (3) consecutive annual inspections conducted by the Department.

(b) UST systems described in this Section shall meet the secondary containment requirements of Section 280.20(g) or the closure requirements under Subpart G of this Part (including applicable requirements for corrective action under Subpart F.), no later than December 22, 2018. The requirements of Section 280.20(g) shall also apply to any UST system determined to be described by Section 280.25(a) after December 22, 2018.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 40, Issue No. 5, Doc. No. 4565, eff May 27, 2016.

**SUBPART C**  
**General Operating Requirements**

**SECTION 280.30. SPILL AND OVERFILL CONTROL.**

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

[Note: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."]

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with Section 280.53.

**SECTION 280.31. OPERATION AND MAINTENANCE OF CORROSION PROTECTION.**

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) Frequency. All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the Department; and

(2) Inspection criteria. The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

[Note: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.]

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with Section 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (c) of this section; and

(2) The results of testing from the last two inspections required in paragraph (b) of this section.

**SECTION 280.32. COMPATIBILITY.**

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

[Note: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(A) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(B) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."]

### **SECTION 280.33. REPAIRS ALLOWED.**

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

[Note: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."]

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications. Should the piping replacement or repair within a consecutive 12 month period constitute more than 25 percent of the piping by length, the entire piping run must be replaced with secondarily contained piping.

(d) Repaired tanks and piping must be tightness tested in accordance with Sections 280.43(c) and 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d)(1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in Section 280.43(d) through (h); or

(3) Another test method is used that is determined by the Department to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with Section 280.31(b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

**HISTORY: Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.**

### **SECTION 280.34. REPORTING AND RECORDKEEPING.**

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the Department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) Reporting. Owners and operators must submit the following information to the Department:

(1) Notification for all UST systems (Section 280.22), which includes certification of installation for new UST systems (Section 280.20(f));

(2) Reports of all releases including suspected releases (Section 280.50), spills and overfills (Section 280.53), and confirmed releases (Section 280.61);

(3) Corrective actions planned or taken including initial abatement measures (Section 280.62), initial site characterization (Section 280.63), free product removal (Section 280.64), investigation of soil and ground-water cleanup (Section 280.65), and corrective action plan (Section 280.66);

(4) A notification before permanent closure or change-in-service (Section 280.71);

(5) Documentation of all completed UST system upgrading (Section 280.21); and

(6) Results of site investigation on a form supplied by the Department or an approved substitute (Section 280.72).

(b) Recordkeeping. Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (Section 280.20(a)(4); Section 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (Section 280.31);

(3) Documentation of UST system repairs (Section 280.33(f));

(4) Recent compliance with release detection requirements (Section 280.45); and

(5) Results of the site investigation conducted at permanent closure (Section 280.74).

(6) Documentation of UST facility operator designation and training (Section 280.35).

(c) Availability and Maintenance of Records. Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the Department; or

(2) At a readily available alternative site and be provided for inspection to the Department upon request.

(3) In the case of permanent closure records required under Section 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the Department if they cannot be kept at the site or an alternative site as indicated above.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue No. 5, eff May 23, 2008.

## **SECTION 280.35. OPERATOR TRAINING REQUIRED.**

(a) Not later than August 8, 2009, the Department shall develop an Operator Training Plan.

(b) The training plan shall:

(1) Be developed in cooperation with tank owners and operators; and

(2) Take into consideration training programs implemented by tank owners and tank operators; and

(3) Be communicated to tank owners and operators; and

(4) Provide options for obtaining training; and

(5) Describe minimum curriculum standards and evaluation requirements for operator training.

(c) Not later than two years from the publication date of the Department's Operator Training Plan, operator training is required for all operators of underground storage tank systems that meet the definition of "UST system" in Section 280.12, except for those underground storage tank systems identified in Section 280.10(b) and 280.10(c) as excluded or deferred underground storage tank systems. Three categories of operators must be trained:

(1) Class A Operator - Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems.

(2) Class B Operator - Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems.

(3) Class C Operator - Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(d) Class A and B Operators shall be trained in facility-specific operation and maintenance and/or emergency response actions within 30 days of being designated as an operator at the UST facility.

(e) Once each month, Class B Operators shall validate that:

- (1) Each assigned facility has accomplished the required release detection monitoring;
- (2) Each assigned facility has the required release and equipment monitoring records;
- (3) Required equipment and system testing has been accomplished;
- (4) Unusual operating conditions or release detection system indications have been reported and investigated;
- (5) Routine operations and maintenance activities have been accomplished;
- (6) Spill, overfill, and corrosion protection systems are in place and operational;
- (7) Class C operators have been designated and trained.

(f) Class B Operators shall physically visit each assigned facility quarterly.

(g) Class C Operators shall be trained in facility specific emergency response actions before they assume responsibility for the UST facility.

(h) Operator Identification. Each facility will need at least one individual trained to perform the duties in each operator category (A, B, and C). At small facilities, one individual may handle all three duties. However, in the operation and maintenance structure at an underground storage tank facility that is part of a large store chain, open 24-hours, a number of persons may be designated to perform duties and responsibilities of operator classes A, B, and C.

(1) Not later than three months after the publication date of the Operator Training Plan, tank owners shall notify the Department of the number of operators in Operator Class A and Operator Class B for each UST facility. Not later than thirty days after Class A and Class B Operators complete appropriate operator training, tank owners will notify the department of the name, training completion date and training provider for each operator.

(i) The Department shall establish a registry of Class A and Class B operators to include facility responsibility, training completion date, and training provider.

(ii) The Department shall verify that training is current for Class A and Class B Operators during inspections at UST facilities.

(2) Tank owners shall designate in writing the Class C Operators for each facility and keep a copy of that designation on file at the facility.

(i) Tank owners shall be responsible for training Class C Operators.

(ii) Tank owners shall document training for Class C Operators and maintain a copy of that documentation on file at the facility.

(iii) The Department shall verify such documentation during inspections.

(i) Persons having primary responsibility and daily on-site operation and maintenance responsibility of underground storage tank systems (Class A and/or Class B Operators) shall repeat relevant facility-specific training if the tank for which they have such responsibilities is determined to be out of compliance with the requirements of this regulation.

**HISTORY: Added by State Register Volume 32, Issue No. 5, eff May 23, 2008.**

#### ***SUBPART D*** ***Release Detection***

### **SECTION 280.40. GENERAL REQUIREMENTS FOR ALL UST SYSTEMS.**

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

- (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;
- (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in Sections 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990, except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in Section 280.43(b), (c), and (d) or 280.44(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) When a release detection method operated in accordance with the performance standards in Sections 280.43 and 280.44 indicates a release may have occurred, owners and operators must notify the Department in accordance with Subpart E.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this Subpart by December 22nd of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION					
YEAR WHEN RELEASE DETECTION IS REQUIRED (BY DECEMBER 22 OF THE YEAR INDICATED)					
YEAR SYSTEM WAS INSTALLED	1989	1990	1991	1992	1993
BEFORE 1965 OR DATE UNKNOWN	RD	P			
1965—1969		P/RD			
1970—1974		P	RD		
1975—1979		P		RD	
1980—1988		P			RD
NEW TANKS (AFTER DECEMBER 22) IMMEDIATELY UPON INSTALLATION					

P= Must begin release detection for all pressurized piping in accordance with Sections 280.41(b) and 280.42(b)(4).

RD= Must begin release detection for tanks and suction piping in accordance with Sections 280.41(a), 280.41(b), and 280.42.

(d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this Subpart must complete the closure procedures in Subpart G by the date on which release detection is required for that UST system under paragraph (c) of this section.

**HISTORY:** Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.

## SECTION 280.41. REQUIREMENTS FOR PETROLEUM UST SYSTEMS.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in Section 280.43 (d)-(i) except that:

(1) UST systems that meet the performance standards in Section 280.20 or 280.21, and the monthly inventory control requirements in Section 280.43(a) or (b) may use tank tightness testing (conducted in accordance with Section 280.43(c)) at least every 5 years until December 22, 2008, or until 10 years after the tank is installed or upgraded under Section 280.21(b), whichever is earlier;

(2) UST systems that do not meet the performance standards in Section 280.20 or 280.21 may use monthly inventory controls (conducted in accordance with Section 280.43(a) or (b) and annual tank tightness testing (conducted in accordance with Section 280.43(c)) until December 22, 1998 when the tank must be upgraded under Section 280.21 or permanently closed under Section 280.71; and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with Section 280.43(b)).

(b) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) Pressurized piping. Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with Section 280.44(a); and

(ii) Have an annual line tightness test conducted in accordance with Section 280.44(b) or have monthly monitoring conducted in accordance with Section 280.44(c).

(2) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with Section 280.44(b), or use a monthly monitoring method conducted in accordance with Section 280.44(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with paragraphs (b)(2)(ii)-(iv) of this section to be readily determined.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.**

## **SECTION 280.42. REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS.**

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in Section 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.

(b) Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every 30 days.

[Note: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.]

(2) Double-walled tanks must be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

(i) Contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with Section 280.44(a).

(5) Other methods of release detection may be used if owners and operators:

- (i) Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in Sections 280.43(b)-(h) can detect a release of petroleum;
- (ii) Provide information to the Department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and
- (iii) Obtain approval from the Department to use the alternate release detection method before the installation and operation of the new UST system.

### SECTION 280.43. METHODS OF RELEASE DETECTION FOR TANKS.

Each method of release detection for tanks used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

(a) Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

- (1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (4) Deliveries and measurements are made through a drop tube that extends to within one foot of the tank bottom;
- (5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and
- (6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

[Note: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.]

(b) Manual tank gauging. Manual tank gauging must meet the following requirements:

- (1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
- (2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;
- (3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (4) A leak is suspected and subject to the requirements of Subpart E if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard
550 gallons or less	10 gallons	5 gallons
551–1,000 gallons	13 gallons	7 gallons
1,001–2,000 gallons	26 gallons	13 gallons

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in Section 280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.

(c) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely

contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of Section 280.43(a).

(e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e)(1)-(4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product;

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering; and

(8) Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

(f) Ground-water monitoring. Testing or monitoring for liquids on the ground water must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (f)(1)-(5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation. Statistical inventory reconciliation (SIR) must be conducted monthly and meet the following requirements:

(1) The method must be third party certified to satisfy the requirements of Section 280.43(i)(1);

(2) The methodology must specifically identify the results for each tank as "pass, fail, or inconclusive". The results report must also identify the threshold, minimum detection level, and measured leak rate for each tank evaluated;

(3) SIR results must be reported in a format designated by the Department; and

(4) A leak is suspected and subject to the requirements of Subpart E for any results other than "pass."

(i) Other methods. Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The Department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c)-(i) of this section. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the Department on its use to ensure the protection of human health and the environment.

**HISTORY: Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue No. 5, eff May 23, 2008.**

## **SECTION 280.44. METHODS OF RELEASE DETECTION FOR PIPING.**

Each method of release detection for piping used to meet the requirements of Section 280.41 must be conducted in accordance with the following:

(a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch

line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

(b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) Applicable tank methods. Any of the methods in Section 280.43(e)-(i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.

## **SECTION 280.45. RELEASE DETECTION RECORDKEEPING.**

All UST system owners and operators must maintain records in accordance with Section 280.34 demonstrating compliance with all applicable requirements of this Subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the Department, from the date of installation;

(b) The results of any sampling, testing, or monitoring must be maintained as follows:

(1) For tank systems storing regulated substances, records must be maintained for at least 1 year, or for another reasonable period of time determined by the Department, except that the results of tank tightness testing conducted in accordance with Section 280.43(c) must be retained until the next test is conducted; or

(2) For tank systems temporarily closed, records for the most recent 12 months of operation must be maintained as follows:

(i) For one year after taking the system out of temporary closure status and returning regulated substances to the system; or

(ii) As required by Section 280.45(b)(3) for systems subsequently permanently closed.

(3) For tank systems permanently closed, records for the most recent 12 months of operation must be maintained with the results of the site assessment required in Section 280.72 and maintained in accordance with the requirements of Section 280.74.

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the Department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.

### ***SUBPART E***

#### ***Release Reporting, Investigation, and Confirmation***

## **SECTION 280.50. REPORTING OF SUSPECTED RELEASES.**

Owners and operators of UST systems must report to the Department within 72 hours and follow the procedures in Section 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

(c) Monitoring results from a release detection method required under Sections 280.41 and 280.42 that indicate a release may have occurred unless:

- (1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
- (2) In the case of inventory control, a second month of data does not confirm the initial result.

### **SECTION 280.51. INVESTIGATION DUE TO OFF-SITE IMPACTS.**

When required by the Department, owners and operators of UST systems must follow the procedures in Section 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the Department or brought to its attention by another party.

### **SECTION 280.52. RELEASE INVESTIGATION AND CONFIRMATION STEPS.**

Unless corrective action is initiated in accordance with Subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under Section 280.50 within 7 days, or another reasonable time period specified by the Department, using either the following steps or another procedure approved by the Department:

(a) System test. Owners and operators must conduct tests (according to the requirements for tightness testing in Sections 280.43(c) and 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with Subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Subpart F;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

### **SECTION 280.53. REPORTING AND CLEANUP OF SPILLS AND OVERFILLS.**

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overflow and report to the Department within 72 hours and begin corrective action in accordance with Subpart F in the following cases:

(1) Spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the Department, or that causes a sheen on nearby surface water; and

(2) Spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons or another reasonable amount specified by the Department, and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 72 hours owners and operators must immediately notify the Department.

[Note: A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 72 hours) to the National Response Center under Sections

102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (40 CFR 302.6) and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).]

**SUBPART F**  
***Release Response and Corrective Action for UST Systems***  
***Containing Petroleum or Hazardous Substances***

**SECTION 280.60. GENERAL.**

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under Section 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under Section 3004(u) of the Resource Conservation and Recovery Act, as amended.

**SECTION 280.61. INITIAL RESPONSE.**

Upon confirmation of a release in accordance with Section 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 72 hours of a release:

- (a) Report the release to the Department (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

**SECTION 280.62. INITIAL ABATEMENT MEASURES AND SITE CHECK.**

(a) Unless directed to do otherwise by the Department, owners and operators must perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;
- (5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by Section 280.52(b) or the closure site assessment of Section 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and
- (6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with Section 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the Department, owners and operators must submit a report to the Department summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

**SECTION 280.63. INITIAL SITE CHARACTERIZATION.**

(a) Unless directed to do otherwise by the Department, owners and operators must assemble information about the site and the nature of the release, including information gained while

confirming the release or completing the initial abatement measures in Sections 280.60 and 280.61. This information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
  - (2) Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
  - (3) Results of the site check required under Section 280.62(a)(5); and
  - (4) Results of the free product investigations required under Section 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under Section 280.64.
- (b) Within 45 days of release confirmation or another reasonable period of time determined by the Department, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the Department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the Department.

#### **SECTION 280.64. FREE PRODUCT REMOVAL.**

At sites where investigations under Section 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Department while continuing, as necessary, any actions initiated under Sections 280.61 through 280.63, or preparing for actions required under Sections 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

- (a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;
- (b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (d) Unless directed to do otherwise by the Department, prepare and submit to the Department, within 45 days after confirming a release, a free product removal report that provides at least the following information:
  - (1) The name of the person(s) responsible for implementing the free product removal measures;
  - (2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
  - (3) The type of free product recovery system used;
  - (4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
  - (5) The type of treatment applied to, and the effluent quality expected from, any discharge;
  - (6) The steps that have been or are being taken to obtain necessary permits for any discharge; and
  - (7) The disposition of the recovered free product.

#### **SECTION 280.65. INVESTIGATIONS FOR SOIL AND GROUND-WATER CLEAN-UP.**

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

- (1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);
- (2) Free product is found to need recovery in compliance with Section 280.64;

(3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under Sections 280.60 through 280.64); and

(4) The Department requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the Department.

#### **SECTION 280.66. CORRECTIVE ACTION PLAN.**

(a) At any point after reviewing the information submitted in compliance with Sections 280.61 through 280.63, the Department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the Department. Alternatively, owners and operators may, after fulfilling the requirements of Sections 280.61 through 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Department, and must modify their plan as necessary to meet this standard.

(b) The Department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Department should consider the following factors as appropriate:

- (1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) The hydrogeologic characteristics of the facility and the surrounding area;
- (3) The proximity, quality, and current and future uses of nearby surface water and ground water;
- (4) The potential effects of residual contamination on nearby surface water and ground water;
- (5) An exposure assessment; and
- (6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the Department, owners and operators must implement the plan, including modifications to the plan made by the Department. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Department.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

- (1) Notify the Department of their intention to begin cleanup;
- (2) Comply with any conditions imposed by the Department, including halting cleanup or mitigating adverse consequences from cleanup activities; and
- (3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the Department for approval.

#### **SECTION 280.67. PUBLIC PARTICIPATION.**

(a) For each confirmed release that requires a corrective action plan, the Department must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The Department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the Department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The Department must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Department.

#### ***SUBPART G***

#### ***Out-of-Service UST Systems and Closure***

### **SECTION 280.70. TEMPORARY CLOSURE.**

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with Section 280.31, and any release detection in accordance with Subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in Section 280.20 for new UST systems or the upgrading requirements in Section 280.21, except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with Sections 280.71-280.74, unless the Department provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with Section 280.72 before such an extension can be applied for.

(d) When an UST system is temporarily closed, owners and operators must maintain records in accordance with Section 280.45(b)(2).

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.

### **SECTION 280.71. PERMANENT CLOSURE AND CHANGES-IN-SERVICE.**

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of this section, or within another reasonable time period determined by the Department, owners and operators must notify the Department of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action. At least 30 days before replacing previously installed piping or previously installed dispensers, owners and operators must notify the Department of their intent. The required assessment of the excavation zone under Section 280.72 must be performed after notifying the Department but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with Section 280.72.

[Note: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard. . .Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.]

**HISTORY:** Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.

### **SECTION 280.72. ASSESSING THE SITE AT CLOSURE OR CHANGE-IN-SERVICE AND REPORTING REQUIREMENTS.**

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in Section 280.43(e) and (f) is operating in accordance with the requirements in Section 280.43 at the time of closure or change-in-service, and indicates no release has occurred.

(b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with Subpart F.

(c) Owners and operators must submit the information collected in compliance with paragraph (a) of this section, on a form supplied by the Department or an approved substitute, to the Department not later than 60 days after the tank has been either removed from the ground or filled with an inert solid material.

**HISTORY:** Amended by State Register Volume 21, Issue No. 5, eff May 23, 1997.

### **SECTION 280.73. APPLICABILITY TO PREVIOUSLY CLOSED UST SYSTEMS.**

When directed by the Department, the owner and operator of an UST system permanently closed before December 22, 1988, must access the excavation zone and close the UST system in accordance with this Subpart if releases from the UST may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

### **SECTION 280.74. CLOSURE RECORDS.**

Owners and operators must maintain records in accordance with Section 280.34 that are capable of demonstrating compliance with closure requirements under this Subpart. The results of the excavation zone assessment required in Section 280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and operators who took the UST system out of service;
- (b) By the current owners and operators of the UST system site; or
- (c) By mailing these records to the Department if they cannot be maintained at the closed facility.

#### ***SUBPART H*** ***Financial Responsibility***

### **SECTION 280.90. APPLICABILITY.**

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems in South Carolina except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the effective date of this subpart.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in section 280.10(b) or (c).

(e) If the owner and operator of a petroleum UST are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in section 280.91.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.91. COMPLIANCE DATES.**

[Note: Pursuant to 40 CFR Part 280, Vol. 58, No. 31 of February 18, 1993, the Federal Regulation entitled "Underground Storage Tanks Containing Petroleum—Financial Responsibility Requirements; Final Rule" became effective one year after its date of publication. The federal regulation thus became effective on February 18, 1994.]

As enacted by Title 44, Chapter 2, of the 1976 South Carolina Code of Laws, the State Underground Petroleum Environmental Response Bank Act (hereafter referred to as the SUPERB Act), all petroleum UST owners or operators are required to comply with the requirements of this subpart. Compliance with this subpart is required on September 22, 1995.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.92. DEFINITION OF TERMS.**

When used in this subpart, the following terms shall have the meanings given below:

(a) "Accidental release" means any sudden or nonsudden release of petroleum from an UST that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the UST owner or operator.

(b) "Bodily injury" shall have the meaning given to this term by applicable South Carolina law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

(c) "Chief Financial Officer", in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

(d) "Controlling interest" means direct ownership of at least 50 percent of the voting stock of another entity.

(e) "Department" refers to the South Carolina Department of Health and Environmental Control.

(f) "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dun and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. "Financial reporting year" may thus comprise a fiscal or a calendar year period.

(g) "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought, (1) by the Environmental Protection Agency (EPA) or the state of South Carolina to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.

(h) Local government shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

(i) "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST.

[Note: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."]

(j) "Owner or operator," when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

(k) "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

(l) "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

(m) "Property damage" shall have the meaning given this term by applicable South Carolina law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

(n) "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in sections 280.95 through 280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

(o) "SCUSTCR" refers to the South Carolina Underground Storage Tank Control Regulations, promulgated pursuant to section 44-2-50 of the 1976 South Carolina Code of Laws and enacted in March, 1990.

(p) "Substantial business relationship" means the extent of a business relationship necessary under applicable South Carolina law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

(q) "Substantial compliance" as stated in section 44-2-20(14) of the 1976 Code of Laws, as amended, means that a UST owner or operator has demonstrated a good faith effort to comply with regulations necessary and essential in preventing releases, in facilitating their early detection, and in mitigating their impact on public health and the environment.

(r) "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable South Carolina law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping constituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

(s) "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.93. AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY.**

[Note: The SUPERB Account and the SUPERB Financial Responsibility Fund, described in section 280.101, may be used to meet the South Carolina financial responsibility requirements for corrective action and third party liability, respectively, when used in conjunction with the owner or operator responsibilities given in section 280.101.]

(a) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum USTs that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1,000,000.

(2) For all other owners or operators of petroleum USTs; \$500,000.

(b) Owners or operators of petroleum USTs must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs in at least the following annual aggregate amounts:

(1) For owners or operators of 1 to 100 petroleum USTs, \$1,000,000; and

(2) For owners or operators of 101 or more petroleum USTs, \$2,000,000.

(c) For the purposes of paragraphs (b) and (f) of this section, only, "a petroleum UST" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in paragraph (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in paragraphs (a) and (b) of this section.

(e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum USTs, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum USTs are acquired or installed. If the number of petroleum USTs for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.94. ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS.**

(a) Subject to the limitations of paragraphs (b) and (c) of this section:

(1) An owner or operator, including a local government owner or operator, may use any one or combination of the mechanisms listed in sections 280.95 through 280.103 to demonstrate financial responsibility under this subpart for one or more USTs, and

(2) A local government owner or operator may use any one or combination of the mechanisms listed in sections 280.104 through 280.107 to demonstrate financial responsibility under this subpart for one or more USTs.

(b) An owner or operator may use a guarantee under section 280.96 or surety bond under section 280.98 to establish financial responsibility if such mechanism is approved by the South Carolina Attorney General as a legally valid and enforceable obligation in South Carolina.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.95. FINANCIAL TEST OF SELF-INSURANCE.**

(a) An owner or operator, and/or guarantor, may satisfy the requirements of section 280.93 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of paragraph (b) or (c) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The owner or operator, and/or guarantor, must have a tangible net worth of at least ten times:

(i) The total of the applicable aggregate amount required by section 280.93, based on the number of USTs for which a financial test is used to demonstrate financial responsibility to EPA under this section or to the Department;

(ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 and to the Department (subsequent to authorization by EPA under 40 CFR Part 271); and

(iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Part 144.63 and to the Department (subsequent to authorization by EPA under 40 CFR Part 145).

(2) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(3) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in paragraph (d) of this section.

(4) The owner or operator, and/or guarantor, must either:

(i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(ii) Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

(5) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(c)(1) The owner or operator, and/or guarantor must meet the financial test requirements of 40 CFR 264.147(f)(1), substituting the appropriate amounts specified in sections 280.93(b)(1) and (b)(2) for the "amount of liability coverage" each time specified in that section.

(2) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(3) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

(4) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in paragraph (d) of this section.

(5) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(d) To demonstrate that it meets the financial test under paragraph (b) or (c) of this section, the chief financial officer of the owner or operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except

that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following South Carolina facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Part 271 and 145:

	Amount
EPA Regulation:	
Closure (sections 264.143 & 265.143) .....	\$ _____
Post-Closure Care (sections 264.145 & 265.145) .....	\$ _____
Liability Coverage (sections 264.147 and 265.147) .....	\$ _____
Corrective Action (section 264.101(b)) .....	\$ _____
Plugging and Abandonment (section 144.63) .....	\$ _____

	Amount
South Carolina (Subsequent to authorization):	
Closure .....	\$ _____
Post-Closure Care .....	\$ _____
Liability Coverage .....	\$ _____
Corrective Action .....	\$ _____
Plugging and Abandonment .....	\$ _____
TOTAL .....	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of paragraph (b) of section 280.95 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of paragraph (c) of section 280.95 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee ..... \$ \_\_\_\_\_
2. Amount of corrective action, closure and post- closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee ..... \$ \_\_\_\_\_



12. Current assets ..... \$ \_\_\_\_\_
13. Current liabilities ..... \$ \_\_\_\_\_
14. Net working capital [subtract line 13 from line 12] ..... \$ \_\_\_\_\_
15. Is line 14 at least 6 times line 3? ..... Yes    No  
\_\_\_\_\_
16. Current bond rating of most recent bond issue ..... \_\_\_\_\_
17. Name of rating service ..... \_\_\_\_\_
18. Date of maturity of bond ..... \_\_\_\_\_
19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? ..... \_\_\_\_\_

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.95(d) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(e) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(f) The Department may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the Department finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of section 280.95(b) or (c) and (d), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Department that he or she no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.96. GUARANTEE.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) A firm that (i) possesses a controlling interest in the owner or operator; (ii) possesses a controlling interest in a firm described under (a)(1)(i) of this section; or, (iii) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or,

(2) A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 280.95 based on year-end financial statements for the

latest completed financial reporting year by completing the letter from the chief financial officer described in section 280.95(d) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the Department notifies the guarantor that he no longer meets the requirements of the financial test of section 280.95(b) or (c) and (d), the guarantor must notify the owner or operator within 10 days of receiving such notification from the Department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in section 280.110(c).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Department of Health and Environmental Control (Department) and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

#### Recitals.

(1) Guarantor meets or exceeds the financial test criteria of R.61-92.280.95(b) or (c) and (d) and agrees to comply with the requirements for guarantors as specified in section 280.96(b).

(2) [Owner or operator] owns or operates the following underground storage tank(s) in South Carolina covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22 and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.108, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust in accordance with the provisions of R.61-92.280.108, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department shall fund a standby trust in accordance with the

provisions of R.61-92.280.108 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of R.61-92.280.95(b) or (c) and (d), guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.96(c) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

(d) An owner or operator who uses a guarantee to satisfy the requirements of section 280.93 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.97. INSURANCE AND RISK RETENTION GROUP COVERAGE.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention

group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in paragraph (b)(1) or evidenced by a certificate of insurance worded as specified in paragraph (b)(2), except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

(1)

ENDORSEMENT

Name: \_\_\_\_\_ [name of each covered location]

Address: \_\_\_\_\_ [address of each covered location]

\_\_\_\_\_

\_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period]

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

\_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in R.61-92.280.95 through 280.102.

c. Whenever requested by the Department the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in R.61-92.280.97(b)(1) and that the ["Insurer" or "Group"] is ["eligible to provide insurance as an excess or surplus lines insurer in South Carolina"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(2)

#### CERTIFICATE OF INSURANCE

Name: \_\_\_\_\_ [name of each covered location]

Address: \_\_\_\_\_ [address of each covered location]

\_\_\_\_\_

\_\_\_\_\_

Policy Number: \_\_\_\_\_

Endorsement (if applicable): \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period]

Name of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_

\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the

amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in R.61-92.280.95 through 280.102.

c. Whenever requested by the Department, the ["Insurer" or "Group"] agrees to furnish to the Department a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or other termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in R.61-92.280.97(b)(2) and that the ["Insurer" or "Group"] is eligible to provide insurance as an excess or surplus lines insurer, in South Carolina"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is eligible to provide insurance as an excess or surplus lines insurer in South Carolina.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.98. SURETY BOND.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted:

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): \_\_\_\_\_ [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided

in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond:      Per occurrence      \$ \_\_\_\_\_  
   Annual aggregate      \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, and the State Underground Petroleum Environmental Response Bank Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in R.61-92.280, Subpart H, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Department that the principal has failed to ["take corrective action, in accordance with R.61-92.280, Subpart F and the Department's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with R.61-92.280 and the Department's instructions," and/or "third-party liability

compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92.280.108.

Upon notification by the Department that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Department has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Department under R.61-92.280.108.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in R.61-92.280.98(b) as such regulations were constituted on the date this bond was executed.

#### PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

#### CORPORATE SURETY(IES)

[Name and address]

State of Incorporation: \_\_\_\_\_

Liability limit: \$\_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$\_\_\_\_\_

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of section 280.93 must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.99. LETTER OF CREDIT.**

(a) An owner or operator may satisfy the requirements of section 280.93 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in South Carolina and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### **IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and address of issuing institution]

Department of Health and Environmental Control, Underground Storage Tank Program, 2600 Bull Street, Columbia, SC, 29201

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Resource Conservation and Recovery Act of 1976, as amended, and the State Underground Petroleum Environmental Response Bank Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280.22, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in R.61-92.280.99(b) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of section 280.93 must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Department under section 280.108. This standby trust fund must meet the requirements specified in section 280.103.

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.101. STATE UNDERGROUND PETROLEUM ENVIRONMENTAL RESPONSE BANK (SUPERB) OR OTHER STATE ASSURANCE.**

(a) When used in conjunction with the deductible amount[s] referenced in (c) below, the SUPERB Account and the SUPERB Financial Responsibility Fund may be used to satisfy the financial responsibility requirements of section 280.93 for corrective action and third party bodily injury or property damage, respectively, for USTs located in South Carolina.

(b) To be qualified for coverage by these funds, the UST owner or operator shall meet the following requirements which have been extracted from Title 44, Chapter 2 of the 1976 Code of Laws, the State Underground Petroleum Environmental Response Bank Act, as amended, and the regulations promulgated thereafter:

(1) The UST for which coverage is requested is in substantial compliance with SCUSTCR.

(2) All UST registration and annual fees have been paid.

(3) Department representatives have not been denied site access during reasonable hours to perform any requested activities authorized under the SUPERB Act.

(4) The owner or operator is not cited in any enforcement action by the Department pertaining to the USTs for which coverage is requested.

(c) The deductible[s] in force at the time the site was reported may be met by using the mechanisms listed in sections 280.95 through 280.100 and sections 280.102 through 280.107 or:

(1) For sites where the UST systems do not yet meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least four times the deductible amount.

(2) For sites where the UST systems meet or have been upgraded to meet the federally mandated 1998 performance standards for corrosion protection and spill and overfill protection, by submitting a financial statement signed by a Certified Public Accountant or the chief financial officer of the company showing a tangible net worth of at least two times the deductible amount.

(d) The owner or operator must maintain a completed certificate, provided by the Department in section 280.111(b)(11), on file at the operating facility as proof of financial responsibility. [See sections 280.110 and 280.111 for additional recordkeeping requirements.]

(e) Subsequent to the abolishment of the environmental impact fee as authorized in section 44-2-90 of the SUPERB Act, the coverage amounts afforded by these funds as authorized by this section will no

longer be applicable. At that time owners or operators must demonstrate the full state financial responsibility requirement using approved mechanisms detailed in sections 280.95 through 280.100 and sections 280.102 through 280.107.

**HISTORY:** Added by State Register Volume 20, Issue No. 5, eff May 24, 1996.

## **SECTION 280.102. TRUST FUND.**

(a) An owner or operator may satisfy the requirements of section 280.93 by establishing a trust fund that conforms to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b) The wording of the trust agreement must be identical to the wording specified in section 280.103(b)(1), and must be accompanied by a formal certification of acknowledgment as specified in section 280.103(b)(2).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the Department for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the Department for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraphs (d) or (e) of this section, the Department will instruct the trustee to release to the owner or operator such funds as the Department specifies in writing.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.103. STANDBY TRUST FUND.**

(a) An owner or operator using any one of the mechanisms authorized by sections 280.96, 280.98, or 280.99 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or a South Carolina agency.

(b)(1) The standby trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### **TRUST AGREEMENT**

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of SOUTH CAROLINA" or "a national bank"], the "Trustee."

[Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, and the Department of Health and Environmental Control, an agency of the state of South Carolina, have established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank (This paragraph is only applicable to the standby trust agreement.);

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

[Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Health and Environmental Control (Department). The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Department's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of

prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. ag-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Department if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of South Carolina, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in R.61-92.280.103(b)(1) as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

Attest:

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

(2) The standby trust agreement must be accompanied by a formal certification of acknowledgment similar to the following.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

(c) The Department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(d) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.104. LOCAL GOVERNMENT BOND RATING TEST.**

(a) A general purpose local government owner or operator and/or local government serving as a guarantor may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of general obligation bonds of \$1 million or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating must be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

(b) A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and does not have the legal authority to issue general obligation bonds may satisfy the requirements of section 280.93 by having a currently outstanding issue or issues of revenue bonds of \$1 million or more, excluding refunded issues and by also having a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard & Poor's, the lower rating for each bond must be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

(c) The local government owner or operator and/or guarantor must maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

(d) To demonstrate that it meets the local government bond rating test, the chief financial officer of a general purpose local government owner or operator and/or guarantor must sign a letter worded

exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date:

Maturity date:

Outstanding amount:

Bond rating:

Rating agency:

(Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(d) as such regulations were constituted on the date shown immediately below.

[Date]\_\_\_\_\_

[Signature]\_\_\_\_\_

[Name]\_\_\_\_\_

[Title]\_\_\_\_\_

(e) To demonstrate that it meets the local government bond rating test, the chief financial officer or operator and/or guarantor other than a general purpose government must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Underground storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue date:

Maturity date:

Outstanding amount:

Bond rating:

Rating agency:

(Moody's or Standard & Poor's)

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1 million. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.104(e) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

(f) The Department may require reports of financial condition at any time from the local government owner or operator, and/or local government guarantor. If the Department finds, on the basis of such reports or other information, that the local government owner or operator, and/or guarantor, no longer meets the local government bond rating test requirements of section 280.104, the local government owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(g) If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator must obtain alternative coverage within 150 days of the change in status.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995; Amended by State Register Volume 32, Issue No. 5, eff May 23, 2008.

## **SECTION 280.105. LOCAL GOVERNMENT FINANCIAL TEST.**

(a) A local government owner or operator may satisfy the requirements of section 280.93 by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator must have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator must meet the criteria of paragraphs (b)(2) and (b)(3) of this section based on year-end financial statements for the latest completed fiscal year.

(b)(1) The local government owner or operator must have the following information available, as shown in the year-end financial statements for the latest completed fiscal year:

(i) Total Revenues: Consists of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of

the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

(ii) Total Expenditures: Consists of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

(iii) Local Revenues: Consists of total revenues (as defined in paragraph (b)(1)(i) of this section) minus the sum of all transfers from other governmental entities, including all monies received from Federal, State, or local government sources.

(iv) Debt Service: Consists of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Excludes payments on non-interest-bearing short-term obligation, interfund obligation, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

(v) Total Funds: Consists of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Includes Federal securities, Federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

(vi) Population: consists of the number of people in the area served by the local government.

(2) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

(3) The local government owner or operator must have a letter signed by the chief financial officer worded as specified in paragraph (c) of this section.

(c) To demonstrate that it meets the financial test under paragraph (b) of this section, the chief financial officer of the local government owner or operator, must sign, within 120 days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [an] underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to R.61-92.280.22.

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have Moody's rating of Aaa, Aa, A, or Baa or

a Standard & Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

#### WORKSHEET FOR MUNICIPAL FINANCIAL TEST

##### Part I: Basic Information

1. Total Revenues
  - a. Revenues (dollars) \_\_\_\_\_

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

- b. Subtract interfund transfers (dollars) \_\_\_\_\_
  - c. Total Revenues (dollars) \_\_\_\_\_

2. Total Expenditures
  - a. Expenditures (dollars) \_\_\_\_\_

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

- b. Subtract interfund transfers (dollars) \_\_\_\_\_
  - c. Total Expenditures (dollars) \_\_\_\_\_

3. Local Revenues
  - a. Total Revenues (from 1c) (dollars) \_\_\_\_\_
  - b. Subtract total intergovernmental transfers (dollars) \_\_\_\_\_
  - c. Local Revenues (dollars) \_\_\_\_\_

4. Debt Service
  - a. Interest and fiscal charges (dollars) \_\_\_\_\_
  - b. Add debt retirement (dollars) \_\_\_\_\_
  - c. Total Debt Service (dollars) \_\_\_\_\_

5. Total Funds (dollars) \_\_\_\_\_

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (Persons) \_\_\_\_\_

##### Part II: Application of Test

7. Total Revenues to Population
  - a. Total Revenues (from 1c) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 7a by 7b \_\_\_\_\_
  - d. Subtract 417 \_\_\_\_\_
  - e. Divide by 5,212 \_\_\_\_\_
  - f. Multiply by 4.095 \_\_\_\_\_

8. Total Expenses to Population
  - a. Total Expenses (from 2c) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 8a by 8b \_\_\_\_\_
  - d. Subtract 524 \_\_\_\_\_
  - e. Divide by 5,401 \_\_\_\_\_
  - f. Multiply by 4.095 \_\_\_\_\_

9. Local Revenues to Total Revenues
  - a. Local Revenues (from 3c) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 9a by 9b \_\_\_\_\_
  - d. Subtract .695 \_\_\_\_\_
  - e. Divide by .205 \_\_\_\_\_
  - f. Multiply by 2.840 \_\_\_\_\_

10. Debt Service to Population
  - a. Debt Service (from 4d) \_\_\_\_\_

- b. Population (from 6) \_\_\_\_\_
  - c. Divide 10a by 10b \_\_\_\_\_
  - d. Subtract 51 \_\_\_\_\_
  - e. Divide by 1,038 \_\_\_\_\_
  - f. Multiply by -1.866 \_\_\_\_\_
11. Debt Service to Total Revenues
- a. Debt Service (from 4d) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 11a by 11b \_\_\_\_\_
  - d. Subtract .068 \_\_\_\_\_
  - e. Divide by .259 \_\_\_\_\_
  - f. Multiply by -3.533 \_\_\_\_\_
12. Total Revenues to Total Expenses
- a. Total Revenues (from 1c) \_\_\_\_\_
  - b. Total Expenses (from 2c) \_\_\_\_\_
  - c. Divide 12a by 12b \_\_\_\_\_
  - d. Subtract .910 \_\_\_\_\_
  - e. Divide by .899 \_\_\_\_\_
  - f. Multiply by 3.458 \_\_\_\_\_
13. Funds Balance to Total Revenues
- a. Total Funds (from 5) \_\_\_\_\_
  - b. Total Revenues (from 1c) \_\_\_\_\_
  - c. Divide 13a by 13b \_\_\_\_\_
  - d. Subtract .891 \_\_\_\_\_
  - e. Divide by 9.156 \_\_\_\_\_
  - f. Multiply by 3.270 \_\_\_\_\_
14. Funds Balance to Total Expenses
- a. Total Funds (from 5) \_\_\_\_\_
  - b. Total Expenses (from 2c) \_\_\_\_\_
  - c. Divide 14a by 14b \_\_\_\_\_
  - d. Subtract .866 \_\_\_\_\_
  - e. Divide by 6.409 \_\_\_\_\_
  - f. Multiply by 3.270 \_\_\_\_\_
15. Total Funds to Population \_\_\_\_\_
- a. Total Funds (from 5) \_\_\_\_\_
  - b. Population (from 6) \_\_\_\_\_
  - c. Divide 15a by 15b \_\_\_\_\_
  - d. Subtract 270 \_\_\_\_\_
  - e. Divide by 4,548 \_\_\_\_\_
  - f. Multiply by 1.866 \_\_\_\_\_
16. Add 7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937 \_\_\_\_\_

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in R.61-92.280.105(c) as such regulations were constituted on the date shown immediately below.

[Date]

[Signature]

[Name]

[Title]

(d) If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(e) the Department may require reports of financial condition at any time from the local government owner or operator. If the Department finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of section 280.105(b) and (c), the owner or operator must obtain alternate coverage within 30 days after notification of such a finding.

(f) If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the Department that it no longer meets the requirements of the financial test, the owner or operator must notify the Department of such failure within 10 days.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.106. LOCAL GOVERNMENT GUARANTEE.**

(a) A local government owner or operator may satisfy the requirements of section 280.93 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be a local government having a “substantial governmental relationship” with the owner or operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

(1) demonstrate that it meets the bond rating test requirement of section 280.104 and deliver a copy of the chief financial officer’s letter as contained in section 280.104(c) to the local government owner or operator; or

(2) demonstrate that it meets the worksheet test requirements of section 280.105 and deliver a copy of the chief financial officer’s letter as contained in section 280.105(c) to the local government owner or operator; or

(3) demonstrate that it meets the local government fund requirements of sections 280.107(a), 280.107(b), or 280.107(c) and deliver a copy of the chief financial officer’s letter as contained in section 280.107 to the local government owner or operator.

(b) If the local government guarantor is unable to demonstrate financial assurance under any of sections 280.104, 280.105, 280.107(a), 280.107(b), or 280.107(c), as the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in section 280.114(c).

(c) The guarantee agreement must be worded as specified in paragraph (d) or (e) of this section, depending on which of the following alternative guarantee arrangements is selected:

(1) If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the Department, the guarantee shall be worded as specified in paragraph (d) of this section.

(2) If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the Department for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in paragraph (e) of this section.

(d) If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

### **Local Government Guarantee With Standby Trust Made by a Local Government**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### **Recitals**

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, or the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c).

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280 and the name

and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall fund a standby trust fund in accordance with the provisions of R.61-92.280.112, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department, shall fund a standby trust in accordance with the provisions of R.61-92.280.112 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor’s obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under workers’ compensation, disability benefits, or unemployment compensation law or other law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from and in the course of employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92 Part 280.106(d) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature of guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

(e) If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

#### Local Government Guarantee Without Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of South Carolina, herein referred to as guarantor, to the Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds (select one: the local government bond rating test requirements of R.61-92.280.104, the local government financial test requirements of R.61-92.280.105, the local government fund under R.61-92.280.107(a), R.61-92.280.107(b), or R.61-92.280.107(c).

(2) [Local government owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to R.61-92.280 or the corresponding state requirement, and the name and address of the facility.] This guarantee satisfies R.61-92.280, Subpart H requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"]; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location arising from operating the above-identified underground storage tank(s) in the amount of (insert: dollar amount) per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the Department and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the Department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with R.61-92.280, Subpart F, the guarantor upon written instructions from the Department shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgement or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"]

accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Department shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph (1), guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to R.61-92.280.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of R.61-92.280, Subpart H for the above identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of R.61-92.280.93.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in R.61-92.280.106(e) as such regulations were constituted on the effective date shown immediately below.

Effective date: \_\_\_\_\_

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: \_\_\_\_\_

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.**

## **SECTION 280.107. LOCAL GOVERNMENT FUND.**

A local government owner or operator may satisfy the requirements of section 280.93 by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in

paragraph (b), a dedicated fund may not be co-mingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

(a) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage; or

(b) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for five times the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 280.93, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund; or

(c) The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully funded. This seven year period is hereafter referred to as the "pay-in-period." The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and;

(1) The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, or

(2) The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

(d) To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator and/or guarantor must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

#### Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this local government fund mechanism:

[List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for ten times the full amount of coverage required under section 280.93, or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority" ].

The details of the local government fund are as follows:

Amount in Fund (market value of fund at close of last fiscal year): \_\_\_\_\_

(If fund balance is incrementally funded as specified in section 280.107(c), insert:

Amount added to fund in the most recently completed fiscal year): \_\_\_\_\_

Number of years remaining in the pay-in-period: \_\_\_\_\_

A copy of the state constitutional provision, or local government statute, charter, ordinance, or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in R.61-92.280.107(d) as such regulations were constituted on the date shown immediately below.

[Date] \_\_\_\_\_

[Signature] \_\_\_\_\_

[Name] \_\_\_\_\_

[Title] \_\_\_\_\_

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.108. SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR.**

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subpart, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of section 280.93.

(b) After obtaining alternate financial assurance as specified in this subpart, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.109. CANCELLATION OR NONRENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE.**

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention coverage, except for non-payment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(b) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in section 280.114, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the Department of such failure and submit:

- (1) The name and address of the provider of financial assurance;
- (2) The effective date of termination; and
- (3) The evidence of the financial assurance mechanism subject to the termination maintained in accordance with section 280.107(b).

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.110. REPORTING BY OWNER OR OPERATOR.**

(a) An owner or operator must submit the appropriate forms listed in section 280.111(b) documenting current evidence of financial responsibility to the Department:

- (1) Within 30 days after the owner or operator identifies a release from an UST required to be reported under sections 280.53 or 280.61;
- (2) If the owner or operator fails to obtain alternate coverage as required by this subpart, within 30 days after the owner or operator receives notice of:
  - (i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
  - (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
  - (iii) Failure of a guarantor to meet the requirements of the financial test,
  - (iv) Other incapacity of a provider of financial assurance; or
- (3) As required by sections 280.95(g) and 280.109(b).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this Part as specified in the new tank notification form when notifying the Department of the installation of a new UST under section 280.22.

(c) The Department may require an owner or operator to submit evidence of financial assurance as described in section 280.111(b) or other information relevant to compliance with this subpart at any time.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.111. RECORDKEEPING.**

(a) Owners or operators must maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this subpart for a UST until released from the requirements of this subpart under section 280.113. An owner or operator must maintain such evidence at the UST site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the Department.

(b) An owner or operator must maintain the following types of evidence of financial responsibility:

- (1) An owner or operator using an assurance mechanism specified in sections 280.95 through 280.100, or section 280.102, or sections 280.104 through 280.107, must maintain a copy of the instrument worded as specified.
- (2) An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.
- (3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) A local government owner or operator using a local government guarantee under section 280.106(d) must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(5) A local government owner or operator using the local government bond rating test under section 280.104 must maintain a copy of its bond rating published within the last twelve months by Moody's or Standard & Poor's.

(6) A local government owner or operator using the local government guarantee under section 280.106, where the guarantor's demonstration of financial responsibility relies on the bond rating test under section 280.104 must maintain a copy of the guarantor's bond rating published within the last twelve months by Moody's or Standard & Poor's.

(7) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(8) An owner or operator covered by the SUPERB fund must maintain on file at the operating facility a copy of the Certification of Financial Responsibility required under section 280.101(d) and supplied in section 280.111(b)(11) below.

(9) An owner or operator using a local government fund under section 280.107 must maintain the following documents:

(i) A copy of the state constitutional provision or local government statute, charter, ordinance, or order dedicating the fund, and

(ii) Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the financial statements must show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

(iii) If the fund is established under section 280.107(a)(3) using incremental funding backed by bonding authority, the owner or operator must also maintain documentation of the required bonding authority, including either the results of a voter referendum (under section 280.107(a)(3)(i)), or attestation by the State Attorney General as specified under section 280.107(a)(3)(ii).

(10) A local government owner or operator using the local government guarantee supported by the local government fund must maintain a copy of the guarantor's year-end financial statement for the most recent completed financial reporting year showing the amount of the fund.

(11)(i) An owner or operator using an assurance mechanism specified in sections 280.95 through 280.107 must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF FINANCIAL RESPONSIBILITY

Complete and return one copy to the Department. Keep one copy at your underground storage tank site.

Site Name \_\_\_\_\_ Site # \_\_\_\_\_

Site Address \_\_\_\_\_

Choose one or a combination of assurance mechanisms to demonstrate financial responsibility under R.61-92.280, Subpart H of the South Carolina Underground Storage Tank Control Regulations (SCUSTCR). Complete the chart for each mechanism selected.

MECHANISM	NAME OF ISSUER	AMOUNT OF COVERAGE	PERIOD OF COVERAGE
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1. State fund (SUPERB)—[If you select this, show coverage of deductible here.]			
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2. Self insurance			
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MECHANISM	NAME OF ISSUER	AMOUNT OF COVERAGE	PERIOD OF COVERAGE
3. Guarantee			
4. Pollution insurance or risk retention group			
5. Surety bond			
6. Letter of credit			
7. Trust fund			
8. Local government options			

\_\_\_\_\_ hereby certifies compliance with the requirements of Sub-part H of SCUSTCR part 280.  
[owner or operator]

\_\_\_\_\_  
[Signature of owner or operator]

\_\_\_\_\_  
[Signature of witness or notary]

\_\_\_\_\_  
[Name of owner or operator]

\_\_\_\_\_  
[Name of witness or notary]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Date]

(ii) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s). As stated in section 280.110, a copy must be sent to the Department under the following circumstances: (1) you install a new tank system; (2) you have confirmed that there has been a release; (3) you change financial mechanisms; (4) the Environmental Protection Agency or the Department requests your records. No mechanism may require expenditure of funds from the SUPERB Account or the SUPERB Financial Responsibility Fund prior to exhausting that mechanism.

**HISTORY: Added by State Register Volume 19, Issue No. 9, eff September 22, 1995; amended by State Register volume 20, Issue No. 5, eff May 24, 1996.**

## **SECTION 280.112. DRAWING ON FINANCIAL ASSURANCE MECHANISMS.**

(a) Except as specified in paragraph (d) of this section, the Department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Department up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1)(i) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(ii) The Department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the Department pursuant to Subparts E or F of a release from a UST covered by the mechanism; or

(2) The conditions of paragraph (b)(1) or (b)(2)(i) or (ii) of this section are satisfied.

(b) The Department may draw on a standby trust fund when:

(1) The Department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under R.61-92.280, Subpart F; or

(2) The Department has received either:

(i) Certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of \$[\_\_\_\_\_].

[Signatures]	[Signature(s)]
Owner or Operator	Claimant(s)
Attorney for Owner or Operator	Attorney(s) for Claimant(s)
(Notary)	Date
(Notary)	Date

or (ii) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a UST covered by financial assurance under this subpart and the Department determines that the owner or operator has not satisfied the judgment.

(c) If the Department determines that the amount of corrective action costs and third-party liability claims eligible for payment under paragraph (b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The Department shall pay third-party liability claims in the order in which the Department receives certifications under paragraph (b)(2)(i) and valid court orders under paragraph (b)(2)(ii).

(d) A governmental entity acting as guarantor under section 280.106(e), the local government guarantee without standby trust, shall make payments as directed by the Department under the circumstances described in section 280.112(a), (b), and (c).

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.113. RELEASE FROM THE REQUIREMENTS.**

An owner or operator is no longer required to maintain financial responsibility under this subpart for an UST after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by R.61-92.280, Subpart G.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### **SECTION 280.114. BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE.**

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 280.96.

(c) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator must notify the Department by certified mail of such commencement and submit the appropriate forms listed in section 280.111(b) documenting current financial responsibility.

(d) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor must notify the local government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in section 280.106.

(e) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subpart within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he must notify the Department.

(f) Within 30 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator must obtain alternate financial assurance.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

## **SECTION 280.115. REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS.**

(a) If at any time after a standby trust is funded upon the instruction of the Department with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) Replenish the value of financial assurance to equal the full amount of coverage required, or

(2) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by section 280.93 of this Subpart. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**HISTORY:** Added by State Register Volume 19, Issue No. 9, eff September 22, 1995.

### ***SUBPART I*** ***Lender Liability***

## **SECTION 280.200. DEFINITIONS.**

(a) UST technical standards, as used in this subpart, refers to the UST requirements under R.61-92 part 280 Subparts B, C, D, G, and section 280.50 of subpart E.

(b) Petroleum production, refining, and marketing.

(1) Petroleum production means the production of crude oil or other forms of petroleum (as defined in section 280.12) as well as the production of petroleum products from purchased materials.

(2) Petroleum refining means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) Petroleum marketing means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) Indicia of ownership means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation,

including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter “lease financing transaction”), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) A holder is a person who, upon the effective date of this regulation or in the future, maintains indicia of ownership (as defined in section 280.200(c)) primarily to protect a security interest (as defined in section 280.200(f)(1)) in a petroleum or petroleum product UST or UST system or facility or property on which a petroleum or petroleum product UST or UST system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) A borrower, debtor, or obligor is a person whose UST or UST system or facility or property on which the UST or UST system is located is encumbered by a security interest. These terms may be used interchangeably.

(f) Primarily to protect a security interest means that the holder’s indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) Security interest means an interest in a petroleum or petroleum product UST or UST system or in the facility or property on which a petroleum or petroleum product UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) Primarily to protect a security interest, as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

(g) “Operation” means, for purposes of this subpart, the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system.

## **SECTION 280.210. PARTICIPATION IN MANAGEMENT.**

The term “participating in the management of an UST or UST system” means that, subsequent to the effective date of this subpart, the holder is engaging in decision-making control of, or activities related to, operation of the UST or UST system, as defined herein.

(a) Actions that are participation in management.

(1) Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation by the holder in the management or control of decision-making related to the operation of an UST or UST system. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in the management of the UST or UST system only if the holder either:

(i) Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the UST or UST system, such that the holder has undertaken responsibility for all or substantially all of the management of the UST or UST system; or

(ii) Exercises control at a level comparable to that of a manager of the borrower’s enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or

substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

(2) Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum or a petroleum product contained in an UST or UST system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions. Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with achieving or maintaining environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in R.61-92 part 280.

(b) Actions that are not participation in management pre-foreclosure.

(1) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system or facility or property on which the UST or UST system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the UST or UST system or facility or property on which the UST or UST system is located.

(2) Loan policing and work out. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan.

(A) A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 280.210(a). Such policing actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system or facility or property on which the UST or UST system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(B) Policing activities also include undertaking by the holder of UST environmental compliance actions and voluntary environmental actions taken in compliance with R.61-92 part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in section 280.210(a) and section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in R.61-92 part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

(ii) Loan work out. A holder who engages in work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the UST or UST system as provided in section 280.210(a). For purposes of this rule, “work out” refers to those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) Foreclosure on an UST or UST system or facility or property on which an UST or UST system is located, and participation in management activities post-foreclosure.

(1) Foreclosure.

(i) Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. For purposes of this subpart, the term “foreclosure” means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the UST, UST system, UST facility, and property on which the UST or UST system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the UST, UST system, UST facility, and property on which the UST or UST system is located. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system or facility or property on which the UST or UST system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system or facility or property on which the UST or UST system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in section 280.210(a)) prior to or after foreclosure.

(ii) For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner an UST or UST system or facility or property on which the UST or UST system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system or facility or property on which the UST or UST system is located, or may employ the means specified in section 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located, as provided in section 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) Holding foreclosed property for disposition and liquidation. A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), an UST or UST system or facility or property on which the UST or UST system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured UST or UST system or facility or property on which the UST or UST system is located. A holder may also arrange for an existing or new operator to continue or initiate operation of the UST or UST system. The holder may conduct these activities without voiding the security interest exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a

broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system or facility or property on which the UST or UST system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system or facility or property on which the UST or UST system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the UST or UST system or facility or property on which the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from the effective date of this subpart or from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the UST, UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the 12-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system or facility or property on which the UST or UST system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system or facility or property on which the UST or UST system is located, is the value of the security interest as defined in this section. The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure). The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the UST or UST system or facility or property on which the UST or UST system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of an UST or UST system or facility or property on which the UST or UST system is located, or other disposition. The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the UST or UST system or facility or property on which the UST or UST system is located), and corrective action costs incurred under sections 280.51 through 280.67 or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

(B) Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the UST or UST system or facility or property on which the UST or UST system is located received at any time after six months following foreclosure, as defined in section 280.210(c). A "written, bona fide, firm offer" means a legally enforceable, commercially

reasonable, cash offer solely for the foreclosed UST or UST system or facility or property on which the UST or UST system is located, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the effective date of this subpart or from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the UST, UST system, UST facility and property on which the UST or UST system is located, whichever is later, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the UST or UST system, UST facility and property on which the UST or UST system is located. If the holder fails to act diligently to acquire marketable title or deed or to gain access to the UST or UST system, the six-month period begins to run from the effective date of this subpart or from the date on which the holder first acquires either title to or possession of the secured UST or UST system, or facility or property on which the UST or UST system is located, whichever is later.

(3) Actions that are not participation in management post-foreclosure. A holder is not considered to be participating in the management of an UST or UST system or facility or property on which the UST or UST system is located when undertaking actions under R.61-92 part 280, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system as provided in section 280.210(a) and section 280.230. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in R.61-92 part 280. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the UST or UST system.

#### **SECTION 280.220. OWNERSHIP OF AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM IS LOCATED.**

Ownership of an UST or UST system or facility or property on which an UST or UST system is located. A holder is not an "owner" of a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided the person:

(a) Does not participate in the management of the UST or UST system as defined in section 280.210; and

(b) Does not engage in petroleum production, refining, and marketing as defined in section 280.200(b).

#### **SECTION 280.230. OPERATING AN UNDERGROUND STORAGE TANK OR UNDERGROUND STORAGE TANK SYSTEM.**

(a) Operating an UST or UST system prior to foreclosure. A holder, prior to foreclosure, as defined in section 280.210(c), is not an "operator" of a petroleum or a petroleum product UST or UST system for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided that, after the effective date of this subpart, the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) Operating an UST or UST system after foreclosure. The following provisions apply to a holder who, through foreclosure, as defined in section 280.210(c), acquires a petroleum or a petroleum product UST or UST system or facility or property on which a petroleum or a petroleum product UST or UST system is located.

(1) A holder is not an “operator” of a petroleum or a petroleum product UST or UST system for purposes of compliance with R.61-92 part 280 if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the UST or UST system, and who can be held responsible for compliance with applicable requirements of R.61-92 part 280.

(2) If another operator does not exist, as provided for under paragraph (b)(1) of this section, a holder is not an “operator” of the UST or UST system, for purposes of compliance with the UST technical standards as defined in section 280.200(a), the UST corrective action requirements under sections 280.51 through 280.67, and the UST financial responsibility requirements under sections 280.90 through 280.111, provided that the holder:

(i) Empties all of its known USTs and UST systems within 60 calendar days after foreclosure or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and

(ii) Empties those USTs and UST systems that are discovered after foreclosure within 60 calendar days after discovery or within 60 calendar days after the effective date of this subpart, whichever is later, or another reasonable time period specified by the implementing agency, so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(3) If another operator does not exist, as provided for under paragraph (b)(1) of this section, in addition to satisfying the conditions under paragraph (b)(2) of this section, the holder must either:

(i) Permanently close the UST or UST system in accordance with sections 280.71 through 280.74, except section 280.72(b); or

(ii) Temporarily close the UST or UST system in accordance with the following applicable provisions of section 280.70:

(A) Continue operation and maintenance of corrosion protection in accordance with section 280.31;

(B) Report suspected releases to the implementing agency; and

(C) Conduct a site assessment in accordance with section 280.72(a) if the UST system is temporarily closed for more than 12 months and the UST system does not meet either the performance standards in section 280.20 for new UST systems or the upgrading requirements in section 280.21, except that the spill and overfill equipment requirements do not have to be met. The holder must report any suspected releases to the implementing agency. For purposes of this provision, the 12-month period begins to run from the effective date of this subpart or from the date on which the UST system is emptied and secured under paragraph (b)(2) of this section, whichever is later.

(4) The UST system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the UST or UST system or facility or property on which the UST or UST system is located. Once a subsequent purchaser acquires marketable title to the UST or UST system or facility or property on which the UST or UST system is located, the purchaser must decide whether to operate or close the UST or UST system in accordance with applicable requirements in R.61-92 part 280.

**HISTORY:** Added by State Register Volume 21, Issue No. 3, eff March 28, 1997.

#### ***SUBPART J***

#### ***Variances—Violations and Penalties—Appeals***

### **SECTION 280.300. VARIANCES.**

The Department may vary the application of any provisions of these regulations, when, in its opinion, the applicant has demonstrated that an equivalent degree of protection will be provided to the State’s waters. Any variance granted or denied by the Department shall be in writing and shall contain a brief statement of the reasons for the approval or denial.

### **SECTION 280.301. VIOLATIONS AND PENALTIES.**

Any person or persons violating these regulations shall be subject to the penalties provided in Title 44 Chapter 2 Section 140 of the Code of Laws of South Carolina, as amended.

### **SECTION 280.302. APPEALS.**

(a) A decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit or registration may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

(b) Any person to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

**HISTORY:** Added by State Register Volume 14, Issue No. 3, eff March 23, 1990. Amended by State Register Volume 21, Issue No. 3, eff March 28, 1997; State Register Volume 21, Issue No. 5, eff May 23, 1997; State Register Volume 32, Issue 5, eff May 23, 2008.